



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 -

YU LAN CAI (also known as YOLANDA CAI)

DISCIPLINE DECISION AND REASONS FOR DECISION

APPEARANCES:

For the Registrant:

Yu Lan Cai (also known as Yolanda Cai)

For the Real Estate Council of Ontario:

Tim Snell, legal counsel
Shaun Chu-A-Kong, legal counsel

Heard in Toronto:

August 22, 2016

FINDINGS:

In violation of Sections 2.(1), with respect to Sections 14, 16 and 30; and Sections 3, 4, 5, 6(1), 7(1), 8(1), 17, 18(1), 21(1), 23, 28(1), 35, 37(1), 38 and 39 of the Code of Ethics.

ORDER:

Fine of \$20,000.00 payable to RECO within one year of sending this decision.

Successful completion of the Real Estate Institute of Canada "REIC 2600: Ethics and Business Practice" course and provide RECO with confirmation of successful completion within six months of sending this decision.

Successful completion of the Real Estate Institute of Canada "REIC 2280: Legal Issues in Real Estate" course and provide RECO with confirmation of successful completion within six months of sending this decision.

COSTS AND EXPENSES:

N/A

REASONS FOR DECISION

INTRODUCTION

This hearing with respect to penalty and costs was held on August 22, 2016 in the presence of counsels for the Registrar, *Real Estate and Business Brokers Act, 2002* (“REBBA 2002”) and the Registrant, Yu Lan Cai (also known as Yolanda Cai) representing herself.

Prior to the Panel determining whether the Registrant failed to comply with the Code of Ethics as alleged in the Allegation Statement, the Panel was advised that Ms. Cai and the Registrar entered into an Agreed Statement of Facts.

AGREED FACTS

The Agreed Statement of Facts read:

1. Yu Lan Cai also known as Yolanda Cai is and was at all relevant times registered as a Salesperson under the Real Estate and Business Brokers Act, 2002 (“the Act”). Her relevant registration history is as follows:
 - a. Ms. Cai was first registered on or about July 17, 2013;
 - b. From on or about July 17, 2013 until on or about October 21, 2013, Ms. Cai was registered with the Brokerage A;
 - c. From on or about October 21, 2013 until on or about May 22, 2014, Ms. Cai was registered with the then registered Brokerage B.
2. On or about October 17, 2013, Registrant, on behalf of the Seller, who was at all relevant times, Ms. Cai was employed by the Bank A.
3. Individual A is Ms. Cai’s mother. Individual A has never been registered under the Act.

BUYER A AND BUYER B, COMPLAINT

4. Sometime during August to October 2013 inclusive, Buyer A and Buyer B (collectively the “Buyers”) engaged Brokerage A through Ms. Cai, to represent them in buying a residential property.

5. In or about September 2013, Ms. Cai indicated she would rebate the Buyers 50% of her commission from a purchase transaction in which she represented them (the "Buyers Rebate Agreement"). At no time did Ms. Cai reduce the Buyers Rebate Agreement to writing, submit it to the Buyers for their signature, and/or provide them with a copy, contrary to Section 2 in respect of Section 14 of the Code of Ethics under the Act ("the Code"), and contrary to Sections 3, 4 and 5 of the Code.
6. Ms. Cai facilitated the unregistered Individual A to trade in real estate, including by providing real estate advice and information and showing properties to clients and/or consumers, contrary to Section 3, 4, 5, 38 and 39 of the Code. Ms. Cai facilitated the unregistered Individual A to obtain access to properties without accompanying her, contrary to Sections 3, 4, 5, 38 and 39 of the Code.
7. On or about October 12, 2013, Ms. Cai informed the Buyers about a residential property at 1-A Street, City A ("1-A Street"). At approximately 8:00 p.m. that evening, Ms. Cai and Individual A accompanied the Buyers to 1-A Street. Ms. Cai attempted to gain entry to 1-A Street without booking an appointment with the seller's brokerage. She also communicated directly with one of the sellers without authorization, contrary to Sections 3, 4, 5 and 7(1) of the Code.
8. On or about October 14, 2013, the Buyers made an Agreement of Purchase and Sale to buy 1-A Street (the "1-A Street APS"). The 1-A Street APS provided for a deposit payable to the listing brokerage on acceptance of \$80,000.00.
9. During negotiations prior to making the 1-A Street APS, Ms. Cai deleted a draft Inspection of Property Condition. The Buyers acquiesced in this. Ms. Cai caused a handwritten condition to be included that did not adequately protect the Buyers including by not defining "wear and tear condition" or "major deficiencies", contrary to Section 4 and 5 of the Code.
10. On or about October 2, 2013, Ms. Cai used her position at Bank A to withdraw \$80,000.00 from Buyer B's Bank A bank account without the written authorization of Buyer B, contrary to Section 3, 5 and 21(1) of the Code. This withdrawal was with the oral authorization of Buyer A. This withdrawal was originally for an earlier offer or another property, which did not proceed, and then the amount was later carried over to 1-A Street APS.

11. The 1-A Street APS was completed on or about December 16, 2013 (the "Completion Date"). 1-A Street APS was still occupied by the sellers to the 1-A Street APS. Ms. Cai and/or Individual A orally represented to the Sellers that they could continue to occupy 1-A Street until after the Completion Date. Ms. Cai did not obtain and did not take steps to ensure that she had obtained the informed consent of the Buyers to this arrangement prior to it being made. Ms. Cai did not reduce the representation whereby the Sellers were informed that they could continue to occupy 1-A Street after the Completion Date to writing contrary to Sections 3, 4, 21(1), 23 and 38 of the Code.
12. Ms. Cai received \$26,152.04 commission from the purchase of 1-A Street. On or about December 31, 2013, Ms. Cai provided Buyer A with a cheque for \$3,178.93 ostensibly to fulfill the Buyers Rebate Agreement, contrary to Section 3, 4, 35, 37(1), 38 and 39 of the Code.

BUYER C AND BUYER D, COMPLAINTS

13. On or about February 6, 2014, Ms. Cai on behalf of Brokerage B entered into a Buyer Representation Agreement with Buyer C.
14. On or about February 6, 2014, Ms. Cai and Individual A showed the residential property known as 2-B Street, City A ("2-B Street") to Li Liu. At some point it was agreed that Ms. Cai and Buyer C would buy 2-B Street jointly, renovate it and sell it for profit. Ms. Cai did not advise Buyer C to obtain independent representation and/or legal advice, but instead insisting that he represent Buyer C, contrary to Sections 3, 4, 5, 6() and 8(1) of the Code.
15. Ms. Cai did not disclose to the seller of 2-B Street through the seller's representative, that she was taking any interest, direct or indirect, in 2-B Street and at no time did she provide written disclosure required by Section 32 of the Act, contrary to Section 3, 5, 17 and 38 of the Code.
16. On about February 6, 2014, Buyer C, represented by Brokerage B through Ms. Cai, made an agreement of purchase and sale for 2-B Street (the "2-B Street APS"). Buyer C was named and signed as sole buyer. The purchase price was \$1,020,000.00 with a \$50,000.00 deposit. The completion date was March 31, 2014 (the "Completion Date").

Ms. Cai did not provide Buyer C with a copy of the 2-B Street APS contrary to Sections 3, 4, 5 and 28(1) of the Code.

17. In February and April, 2014, Buyer C and Ms. Cai entered into written agreements that collectively confirmed:

- a. Ms. Cai and Buyer C were each investing 50% in 2-B Street, but all transactions respecting 2-B Street would be in Ms. Cai's name;
- b. Ms. Cai's representation that the down payment on 2-B Street was 35% of \$1,020,000.00;
- c. Buyer C contributed \$170,000.00 towards the purchase of 2-B Street;
- d. Ms. Cai and Buyer C would be jointly responsible 50% each for any mortgages on 2-B Street on a 50-50 basis, and would secure the profits from any sale 50% each;
- e. Neither Ms. Cai or Buyer C could dispose of 2-B Street without the other's consent in advance; otherwise the party disposing owed the other party all profits from the sale;
- f. 2-B Street must be resold "three months after" the Closing Date.

18. Title to 2-B Street was transferred to Ms. Cai, in her name only, on April 1, 2014. Ms. Cai gave a mortgage in her name only. The lender required that Ms. Cai provide a down payment representing 20% of the purchase price and not 35% represented by Ms. Cai. Ms. Cai failed to disclose the terms of the mortgage and the amount of the down payment, contrary to Sections 3, 4, 35, 37(1), 38, and 39 of the Code.

19. In or about May 2015, Buyer C demanded that her investment be returned. In or about the end of May, 2015 Ms. Cai agreed. Buyer C was at some point paid back the amount she had invested plus \$10,000.00 in installments.

20. On or about May 5, 2014, Ms. Cai on behalf of Brokerage B entered into a Buyer Representation Agreement with Buyer D (the "Buyer D BRA"). Commission payable to Brokerage B was 2.5%. Ms. Cai did not sign and date the "Authorized to Sign Brokerage Section" of the Buyer D BRA, and did not ensure that Buyer D properly signed the Buyer D BRA, contrary to Section 5 of the Code of Ethics.

21. Thereafter, between, on or about May 5 and 13/15, Ms. Cai and Individual showed 2-B Street to Buyer D. Ms. Cai did not provide disclosure in respect of multiple representation and did not disclose her interest in 2-B Street including in writing at the earliest practicable opportunity and before any offer was made, contrary to Section 2 in respect of Section 16 of the Code and Sections 3, 4, 5, 17, 18(1), 37(1), 38 and 39 of the Code.
22. At no time did Ms. Cai provide Buyer D with the written disclosure required by Section 32 of the Act or Section 18 of the Code, contrary to Sections 3, 5, 18 and 38 of the Code.
23. After viewing 2-B Street, Buyer D agreed in principle to buy it for \$1,120,000.00.
24. On or about May 13, 2014, Ms. Cai prepared an agreement of purchase and sale (the "May 13, 2014 APS"). The relevant details of the May 13, 2014 APS were as follows:
 - a. Buyer D was named as the buyer;
 - b. Ms. Cai was named as the seller;
 - c. the purchase price was misrepresented as \$1,020,000.00, contrary to Sections 3, 4, 35, 37(1), 38 and 39 of the Code;
 - d. the deposit payable was \$5,000.00 to be held in trust by "LLPC",
 - e. the completion date was July 15, 2014;
 - f. the agreement was executed by Buyer D and Ms. Cai; and
 - g. no information pertaining to Brokerage B is included in the agreement.
25. With regard to \$1,020,000.00 price set out in the May 13, 2014 APS, Ms. Cai explained that the \$100,000.00 difference in price between what was stated in the May 13, 2014 APS and what had been agreed reflected the commission that was due to Ms. Cai. Ms. Cai directed Buyer D to pay her the \$100,000.00 (the "\$100,000.00") directly, which Buyer D did on or about May 14, 2014.
26. In the circumstance, Ms. Cai did not advise Buyer D to obtain independent representation and/or legal advice, contrary to Section 3, 4, 5, 6(1) and 8(1) of the Code.

27. Ms. Cai did not submit the Buyer D BRA or the May 13, 2014 APS or any representation or transaction documents in relation to her representation of Buyer D or the 2-B Street transaction to Brokerage B, including as required by Section 13 of General Regulations 567/05 to the Act, contrary to Section 2 in respect of Section 30 of the Code, and contrary to Section 3, 4, 5 and 38 of the Code.
28. Ms. Cai was paid remuneration from a trade in real estate from a person other than Brokerage B, and to which she was not entitled under the Buyer D BRA, contrary to Sections 3, 4, 35, 38 and 39 of the Code of Ethics.
29. At no relevant time did Ms. Cai disclose to Buyer C that Ms. Cai was endeavouring to sell 2-B Street, or about the May 13, 2014 APS, or about the \$100,000.00, contrary to Section 3, 4, 5, 35, 38 and 39 of the Code.

BUYER E, COMPLAINANT

30. On or about April 14, 2014, Ms. Cai, on behalf of Brokerage B, entered into a Buyer Representation Agreement with Buyer E.
31. At some point in time, Ms. Cai indicated she would rebate Buyer E 50% of Ms. Cai's commission from a purchase transaction in which she represented Buyer E (the "Buyer E Rebate Agreement"). At no time did Ms. Cai reduce the Buyer E Rebate Agreement to writing, submit it to Buyer E for signature, and/or provide her with a copy, contrary to Section 2 in respect of Section 14 of the Code and contrary to Section 3, 4, 5 of the Code.
32. On or about April 14, 2014, Buyer E, represented by Ms. Cai made an Agreement of Purchase and Sale to buy 3-C Street, City A (the "3-C Street APS"). The 3-C Street APS was completed on or about April 30, 2014.
33. Ms. Cai's brokerage, Brokerage B, received commissions totalling \$42,375.00 from the 3-C Street APS, of which Ms. Cai receive \$42,026.00 inclusive of HST, or \$37,200.00 not inclusive.
34. In or about May 2014, Ms. Cai provided Buyer E with \$10,000.00 ostensibly to fulfil the Buyer E Rebate Agreement. After being questioned about the amount, Ms. Cai provided

Buyer E with an additional \$6,800.00. Ms. Cai failed to fully honour the Buyer E Rebate Agreement, contrary to Sections 3, 4, 35, 37(1), 38 and 39 of the Code of Ethics.

35. Ms. Cai is responsible under the following Sections of the Code:

SUBMISSIONS FOR THE REGISTRAR, REBBA 2002

Counsel for RECO (the "Prosecutor") referred the Panel to the nine factors outlined in the *RECO v. Suzette Thompson* case. The Prosecutor indicated that Ms. Cai's conduct in serving her clients had been serious and unacceptable. Ms. Cai did not properly disclose the particulars of her role in transactions to her clients or customers, and she had withdrawn funds without proper consent. Further, it was submitted that Ms. Cai had adopted an adversarial position with her clients, something which did not serve their best interests.

Although the Prosecutor acknowledged that MS. Cai eventually took responsibility for her actions as confirmed by the Agreed Statement of Facts presented to the Panel, it was emphasized that, at the time of the transaction giving rise to the complaint to RECO, Ms. Cai had not been prepared to do so. This was a situation involving multiple complaints for different transactions. However, each complaint received by RECO shared common elements with the other complaints. The complaints against Ms. Cai arose while she was practicing real estate during the articling phase of registration. Still, by that phase, Ms. Cai would have completed many real estate courses and, by implication, she would have known what was expected of her in her dealings with clients and customers.

The Prosecutor acknowledged that if an Agreed Statement of Facts had not been confirmed by the parties, everyone would have been attending a three-day hearing, something that would have inconvenienced the Panel, the parties, and many witnesses. Also, there have been no further complaints against Ms. Cai since the four original complaints which led to this proceeding. Emphasizing general and specific deterrence, the Prosecutor advised that Ms. Cai had clearly preferred her own interests over those of her clients and customers, and that she had failed them by not reducing her promises to writing and by not keeping her commission-related and other promises.

After offering his submissions, the Prosecutor recommended a monetary penalty in the range of \$17,000.00 to \$20,000.00, with the additional requirement that Ms. Cai attend and successfully complete the Real Estate Institute of Canada "REIC 2600: Ethics and Business Practice" course and the Real Estate Institute of Canada "REIC 2280: Legal Issues in Real Estate" course. The

Prosecutor was amenable to some flexibility in deadlines for the payment of the penalty and the completion of the courses.

SUBMISSIONS REGARDING PENALTY – RESPONDENT

For her part, Ms. Cai stated that she felt that doing courses was more important than any monetary penalty. She apologized for her inappropriate conduct and advised that she attends educational meetings offered by her brokerage and takes various course to become more professional.

Ms. Cai submitted that she could not afford to pay a large monetary penalty because she supports her mother and younger brother financially. After telling the Panel that she took full responsibility for her actions and that she is confident that such unethical conduct will not happen again, Ms. Cai stated that any monetary penalty should not exceed \$3,000.00.

CODE OF ETHICS

The Registrant is governed by the *Real Estate and Business Brokers Act, 2002*, S.O. 2002, c.30, Schedule C (“*REBBA 2002*”).

This Discipline Committee is established to hear and determine these issues, in accordance with the prescribed Regulations. The Discipline Committee must determine if the Registrant has failed to comply with the Code of Ethics established by the Minister in accordance with Section 21 of the *REBBA 2002*.

Section 50 of the *REBBA 2002* provides that the Minister may make Regulations establishing a Code of Ethics for the purposes of subsection 21(1).

Ontario Regulation 580/05 is the Code of Ethics pursuant to the *REBBA 2002* and is the Code of Ethics that governs these proceedings.

FINDINGS BY THE PANEL

The Panel has carefully considered the facts in the Agreed Statement of Facts and the submissions of the Parties. In doing so, the Panel has arrived at the following conclusions and determinations:

The Panel is in agreement with the Prosecutor's submissions as to the seriousness of the unethical conduct of Ms. Cai and the recommendation that a significant monetary penalty is appropriate in the circumstances of this case. This case involved *multiple* complaints in different transactions by former clients and/or customers of Ms. Cai. There was a clear pattern of misconduct, most of which was designed to promote Ms. Cai's interests rather than those of the people to whom she owed professional obligations. As such, requiring Ms. Cai simply to take certain educational courses is not sufficient.

The combination of two educational courses and a significant fine would serve the dual purpose of general deterrence and specific deterrence. Ms. Cai and other registrants need to be reminded that placing one's own self-interest above one's ethical and professional obligations to their clients will not be tolerated or pardoned.

While a lengthy hearing involving many witnesses and considerable financial expense was avoided by the parties agreeing on an Agreed Statement of Facts, it was clear that it took considerable time for Ms. Cai to admit as well as appreciate the inappropriate manner in which she had served her clients and customers and conducted herself. In the Panel's view, a clear message to Ms. Cai is, therefore, warranted that she needs to refrain from repeating such conduct, that she needs to consult with other persons within the brokerage where she is employed if she has any doubt or confusion about the propriety of her own conduct, and she needs to realize that the interests of the people who have retained her must come first in her dealings with them. A significant monetary penalty, followed by educational courses to reinforce what is considered to be acceptable vs. non-acceptable conduct, is, therefore, warranted here.

In making its determination on the issue of penalty, the Panel reviewed and took into account the non-exhaustive factors as enunciated by Justice Green in Jaswal v. Newfoundland Medical Board in Proceeding 1993 St. J. No. 225 of the Supreme Court of Newfoundland, Trial Division.

These factors are as follows:

1. *The nature and gravity of the breaches of the Code of Ethics.*
2. *The role of the offending member in the breaches.*
3. *Whether the offending member suffered or gained as a result of the breaches.*
4. *The impact of the breach on complainants or others.*
5. *The need for there to be specific deterrence to protect the public.*
6. *The need for there to be general deterrence to protect the public.*
7. *The need to maintain the public's confidence in the integrity of the profession.*
8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
9. *The range of sanctions in similar cases.*

Having reviewed and considered the Agreed Statement of Facts and after hearing the submissions of the Parties, the Panel has concluded that the Respondent breached Sections 2.(1), with respect to Sections 14, 16 and 30; and Sections 3, 4, 5, 6(1), 7(1), 8(1), 17, 18(1), 21(1), 23, 28(1), 35, 37(1), 38 and 39 of the Code of Ethics. Further, given these many and varied breaches of the Code, the Panel finds that the following penalty is appropriate in the circumstances:

PENALTY

1. YU LAN CAI, also known as YOLANDA CAI, is ordered by pay a Fine of \$20,000.00 to RECO within one year of RECO sending this decision to her.
2. YU LAN CAI, also known as YOLANDA CAI, is ordered to successfully complete the Real Estate Institute of Canada "REIC 2600: Ethics and Business Practice" course and provide RECO with confirmation of successful completion within six months of RECO sending this decision to her.

3. YU LAN CAI, also known as YOLANDA CAI, is ordered to successfully complete the Real Estate Institute of Canada “REIC 2280: Legal Issues in Real Estate” course and provide RECO with confirmation of successful completion within six months of RECO sending this decision to her.

[Released: March 13, 2017]