



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:

REGISTRAR UNDER THE REAL ESTATE AND BUSINESS BROKERS ACT, 2002

- AND-

CHANG LIU (also known as DAVID LIU)

DISCIPLINE DECISION AND REASONS FOR DECISION

APPEARANCES:

For the Registrant:

Chang Liu (also known as David Liu)

For the Real Estate Council of Ontario:

Maya Sabharwal, counsel

Heard in Toronto on:

February 22, 2016

FINDINGS:

In violation of Sections 3, 4, 5, 35, 38 and 39 of the Code of Ethics.

ORDER:

The Parties are to advise the Discipline Panel within 15 days of the date this Discipline Decision and Reasons for Decision is released whether they wish to provide submissions on penalty and/or costs in writing or in person.

Any inquiries relating to the above-mentioned process should be directed to the Manager, Discipline and Appeals Hearings.

COSTS AND EXPENSES:

If appropriate, submissions to be made on costs and expenses with submissions on penalty.

WRITTEN REASONS:

REASONS FOR DECISION

INTRODUCTION

This Hearing was held on February 22, 2016 in the presence of the Respondent Chang Liu, also known as David Liu, (the "Respondent" and/or "Mr. Liu"); Maya Sabharwal, the

Prosecutor for the Real Estate Council of Ontario; and Doug Cunningham, Independent Legal Counsel (“ILC”) to the Discipline Panel.

ALLEGATIONS BY THE REAL ESTATE COUNCIL OF ONTARIO

In its Allegation Statement the Registrar, *REBBA 2002* alleged that Mr. Liu acted unprofessionally when he:

- A) signed a Rebate Agreement, whereby he agreed to pay the Complainants a rebate of 1.2% of the purchase price of the Property, and then failed to pay the Complainants in accordance with the Rebate Agreement.

The Registrar, *REBBA 2002* alleged that Mr. Liu breached the following sections of the Code of Ethics:

3 – Fairness, honesty, etc. – A registrant shall treat every person the registrant deals with in the course of a trade in real estate fairly, honestly and with integrity.

4 – Best interests – A registrant shall promote and protect the best interests of the registrant’s clients.

5 – Conscientious and competent service, etc. – 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.

35 – Financial responsibility – A registrant shall be financially responsible in the conduct of business.

38 – Error, misrepresentation, fraud, etc. – 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.

39 – Unprofessional conduct, etc. – A registrant shall note, 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.

EXHIBITS

1. Allegation Statement, dated July 2, 2015
2. Notice of Hearing, dated February 9, 2016
3. RECO Book of Documents, dated July 2, 2015
4. RECO Supplementary Book of Documents, dated October 27, 2015
5. Translation of Rebate Agreement
6. Translations of Internet Postings
7. Email from Mr. Liu to Administrative Assistant, Hearings, dated February 2, 2016, with attachment
 - Rental deposit receipt and Renting Advertisement re: 1-A Street
 - Home Inspection Report re: 1-A Street
8. Original Rebate Agreement (original returned to Buyer A prior to the end of the Hearing with a colour copy being made for continued use at the Hearing)

WITNESSES FOR THE REAL ESTATE COUNCIL OF ONTARIO

After the Prosecutor had delivered her opening remarks, and prior to the first witness being called to testify an interpreter for the Prosecution's witnesses, was affirmed. The interpreter's services were used for the testimony given by Buyer A and Buyer B, who were not proficient in the English language.

Buyer A (through an interpreter)

Examination-in-Chief

Buyer A testified that he met Mr. Liu while he was seeking to rent a house in City A. After renting accommodation in City A, he and his wife viewed and subsequently decided to make an offer for the real property at issue in this Hearing, which was 1-A Street ("the Property").

Buyer A indicated that during his dealings with Mr. Liu there was discussion about getting a rebate from the commission payable to Mr. Liu if they successfully purchased the Property but, to the best of his recollection, the details of the discussion were not clear to him. Nevertheless, Buyer A testified that his wife, Buyer B, ultimately drafted a written agreement to confirm the separate deal which had been made between Mr. Liu, Buyer A and Buyer B, relating to a rebate in commission. Buyer A also stated that Mr. Liu signed the agreement which had been drafted by Buyer B.

Buyer A was shown Exhibit #5 by the Prosecutor which he advised was the commission-related agreement drafted by his wife. He confirmed that Mr. Liu signed that agreement in his presence. After Mr. Liu did so, Buyer A expected Mr. Liu to fulfil his promise and send them a cheque for the commission rebate after the transaction for the Property had been completed.

As for discussion before the “commission rebate agreement” was signed, Buyer A stated that Mr. Liu *initially* told Buyer A and his wife that he could not sign a commission rebate agreement because it would not be “legal”. However, the agreement which Buyer A’s wife drafted a few days later was signed by Mr. Liu on December 19, 2013. Buyer A stated that his understanding was that the commission rebate agreement related solely to the Property.

Buyer A advised that he did not sign the commission rebate agreement but he confirmed that his wife signed the agreement and that Mr. Liu was present at that time. Immediately after Buyer B signed the agreement, Mr. Liu signed the same document.

Further, Buyer A testified that Mr. Liu was present when Buyer B drafted the commission rebate agreement, and Mr. Liu read the agreement prior to signing it himself. In fact, Buyer A told the Panel that prior to Mr. Liu signing the agreement, he (Mr. Liu) actually corrected certain errors in the draft agreement.

According to Buyer A, the commission rebate agreement was signed *after* an offer had been prepared and submitted to the sellers of the Property.

Buyer A added that Mr. Liu signed the commission rebate agreement on December 19, 2013 in the presence of him, Buyer A's wife, and Buyer A's son and daughter-in-law.

Cross-examination of Buyer A by Mr. Liu

On cross-examination, Mr. Liu asked many questions about issues that had little to do with the purchase of the Property and the alleged commission rebate agreement which was the focus of RECO's allegations.

In response to Mr. Liu's questions, Buyer A confirmed that his son discussed the rental of real property in City A before Buyer A and his wife moved to City A from City B. Buyer A indicated that he and his family needed somewhere to stay in City A before they could think seriously about purchasing any home for themselves. While they were renting a property in City A during 2013, Buyer A was not sure whether they were going to use Mr. Liu's services to help them purchase a property.

Buyer A indicated that his son started looking at properties in December 2013 and that the Property was viewed on December 17th with the commission rebate agreement signed by Mr. Liu on December 19, 2013.

Buyer A testified that he visited six properties in City A, after which he and his wife decided to submit an offer on the Property by mid-December 2013. He also advised the Panel that Mr. Liu had agreed as early as December 17th to give him and his wife a rebate from any commission payable upon their successful purchase of the Property. However, the drafting of a commission rebate agreement was delayed until after an offer was actually made on the Property. Once again, Buyer A stated that the commission rebate agreement was drafted by Buyer B and signed by her and Mr. Liu on December 19, 2013.

When Buyer A was asked why no persons other than Buyer B had signed the alleged commission rebate agreement and why there was no date on the agreement, Buyer A pointed out that there was indeed a date on the agreement: December 19, 2013.

With respect to Mr. Liu's alleged corrections to the draft rebate agreement, Buyer A stated that Mr. Liu suggested those corrections after the offer had been prepared and submitted for the Property. He also added that all of the handwriting on the commission rebate agreement was that of his wife, Buyer B.

Questions on re-direct to Buyer A

On re-direct, Buyer A advised that he expected payment of the commission rebate by Mr. Liu by cheque. He acknowledged, however, that there was no discussion as to whether the rebate cheque would come directly from Mr. Liu or from the brokerage for whom Liu worked. Buyer A made it clear that as of the date of the Hearing he and his wife had not received any rebate monies from Mr. Liu.

Questions from the Panel for Buyer A

On questioning by the Panel, Buyer A stated that it was his wife who had proposed a rebate in commission upon the successful purchase of the Property and, further, that she had insisted on confirming any understanding with Mr. Liu in writing. Buyer A also testified that he, his wife, and his son and daughter-in-law were all present when the written agreement was prepared in the presence of Mr. Liu and Mr. Liu signed that agreement.

Buyer A stated that the commission rebate agreement was signed in the living room of the rental property where they were living at the time. He also added that the paper used for the written agreement had come from a bound notebook in his wife's possession.

Additional questioning by Mr. Liu

Upon Mr. Liu's request to the Panel, the Panel permitted one additional question by Mr. Liu directed to Buyer A. That question was whether Buyer A had ever claimed the "first

time buyer rebate” under an available rebate program when the Property was purchased. Buyer A advised that he had never heard of any such program and that the answer to Mr. Liu’s question was “no”.

Buyer B (through an interpreter)

Examination-in-Chief of Buyer B

Buyer B confirmed that she is the spouse of Buyer A. After being directed to Exhibit #2, Tab 2, she confirmed that the document was her initial complaint to RECO against Mr. Liu, while advising that her son had assisted her in preparing and filing the complaint. With respect to Exhibit #5, Buyer B stated that it was a copy of the commission rebate agreement that she had drafted after Mr. Liu had agreed to give her and her husband a 1.2% rebate on the commission he would earn upon their successful purchase of the Property.

Buyer B advised that she drafted the agreement in Chinese (i.e. Cantonese) since she did not write or understand English. She also testified that Mr. Liu was present when she drafted the agreement. Further, Mr. Liu reviewed the draft agreement and, in doing so, he found a couple of errors and suggested that they be corrected, which Buyer B did in two separate places. Buyer B added that she saw Mr. Liu sign the agreement as Liu Chang above the date of “2013/12/19” which she had included on the document when she signed it.

The commission rebate agreement related solely to the purchase of the Property and the agreement was drafted and signed by Buyer B and Mr. Liu at the rental property where Buyer B and her family were living at the time.

Buyer B confirmed that she and her husband never received the 1.2% commission rebate from Mr. Liu as provided for in the commission rebate agreement.

Cross-examination of Buyer B by Mr. Liu

On cross-examination, Buyer B advised that there were actually two signatures on Exhibit #5 provided by Mr. Liu, one in English and the other in Chinese. As to why there was no date beside either of Mr. Liu's signatures, she advised that she did not know. Buyer B also confirmed that she was happy with the Property.

With respect to any commission rebate, Buyer B stated that she understood that, as long as she used a registrant to purchase the Property, she could negotiate a rebate for some of the commission that the registrant would receive upon its purchase.

When asked why the (alleged) commission rebate agreement only applied to the purchase of the Property, Buyer B stated that when the Buyers Representation Agreement ("BRA") with Mr. Liu was signed on December 17, 2013, Mr. Liu told her that it was a "pre-set" agreement and that changes could not be made to the standard form BRA. Buyer B advised that she was also told by Mr. Liu that she would have to make an offer on a property before a commission rebate agreement could be signed. According to Buyer B, that is precisely what happened in the purchase of the Property, because the rebate agreement was signed after an offer had been submitted on the Property.

Buyer B stated that she wanted to reduce to writing the commission rebate agreement that she had negotiated with Mr. Liu. She stated that Mr. Liu told her to "keep it simple", that the agreement could be drafted in Chinese for his signature, and that the signed agreement "would be legal".

Buyer B stated that, prior to the agreement being drafted by her, Mr. Liu confirmed verbally that if she and her husband used him as their registrant to purchase real property, a rebate from his commission could be arranged. The commission rebate agreement was drafted at the rental property where Buyer B and her family were living and she used a page from a bound notebook she had.

In referring the Panel and parties to the original copy of the agreement (Exhibit #8) which she drafted, Buyer B noted that her signature and those purporting to be Mr. Liu's signatures were in different coloured inks. Buyer B stated that she had a black pen when she signed the agreement and that Mr. Liu had used a blue pen. Once again, Buyer B could not explain why there was no date beside Mr. Liu's signatures, although the date of December 19, 2013 certainly appeared on the document.

Apart from the issue of the unpaid rebate, Buyer B told the Panel that she was generally satisfied with the services, including negotiating skills that Mr. Liu had provided to them to purchase the Property.

There were no questions on re-examination or from the Panel.

WITNESSES FOR THE RESPONDENT

Individual A

Examination-in-Chief of Individual A

Individual A was affirmed and she identified herself as Mr. Liu's wife. She testified that in or about October 2013 she was asked by the former tenant's family of certain rental property to assist them in finding a sub-tenant. Buyer A and Buyer B contacted the existing tenants about the rental property and they travelled from City B to inspect it. Individual A advised that after Buyer A and Buyer B agreed to sublet the rental property, she (Individual A) and Mr. Liu actually helped them clean the apartment and set up their internet service. Individual A added that she and her husband also helped pay some of the initial expenses of Buyer A and Buyer B.

On or about December 7, 2013, Buyer A's son asked Mr. Liu to assist his parents in finding a property to purchase in City A.

Cross-examination of Individual A by the Prosecutor

Upon questioning, Individual A confirmed that she was not present when Exhibit #5, page 3, that is, the purported commission rebate agreement, was discussed or executed by anyone.

Individual A advised that she first became aware of an alleged commission rebate agreement *after* Buyer A and Buyer B had filed their complaint with RECO.

Questions from the Panel

Individual A confirmed she became aware of the alleged commission rebate agreement in 2014.

David Liu

David Liu's testimony in chief

After being affirmed at the Hearing, Mr. Liu testified that he was asked to help the complainants find a property and that, in his view, he and his wife (Individual A) are kind people. He stated that, by contrast, Buyer A and Buyer B were "greedy people" who did not even want to pay for their own internet at the property they were subletting.

Mr. Liu told the Panel that he was asked on or about December 17, 2013 to assist Buyer A and Buyer B in finding a property to purchase in City A and, toward that end, he showed them a number of properties.

According to Mr. Liu, both Buyer A and Buyer B were very satisfied with his negotiating skills in dealing with the sellers of such properties.

As far as any commission rebate agreement was concerned, Mr. Liu stated that he *never* entered into any such agreement with Buyer B and he emphatically denied signing the various copies of the commission rebate agreement that had been presented at the Hearing.

Mr. Liu also stated that he does not enter into commission rebate agreements in his real estate practice and that he simply told the complainants that he would get them the “best deal” for the Property that he was capable of negotiating for them.

Cross-examination of Mr. Liu by the Prosecutor

The Prosecutor showed Mr. Liu Exhibit #8, which was the originally signed copy of the alleged commission rebate agreement—showing Buyer B’s signature in black ink and what purported to be Mr. Liu’s signatures in blue ink.

Mr. Liu testified that he never saw a copy of the alleged commission rebate agreement until just prior to the Hearing.

When asked whether his signatures on *other* documents appeared to be the same or similar to those on the alleged commission rebate agreement, Mr. Liu denied that they were the same or similar.

Then, changing his own testimony, Mr. Liu agreed that the characters in Chinese in Exhibit #4, Tab 1, p. 3 were similar to those on Exhibit #8, the latter being the originally signed copy of the alleged commission rebate agreement.

Questions to Mr. Liu from the Panel

Mr. Liu reiterated that the first time he saw a copy of the alleged agreement which was marked as Exhibit #8 was when he received the Book of Documents from RECO prior to the Hearing. He asserted that he had *no* discussions about any commission rebate with the complainants. Further, Mr. Liu maintained that he *never* signed the purported agreement which had been marked as Exhibit #8 at the Hearing.

SUBMISSIONS ON BEHALF OF RECO

The Prosecutor submitted that Buyer A and Buyer B were very credible about the corrections that had been made to the alleged commission rebate agreement that had been marked as Exhibit #8 at the Hearing. [The Panel also notes that there were other

copies of the same document presented at the Hearing which had formed part of other Exhibits.]

The Prosecutor stated that the complainants' version of events was much more credible than the sweeping denials offered by Mr. Liu. The Prosecutor submitted that Mr. Liu simply made an agreement to provide a commission rebate to the complainants and that he had not been true to his word. Further, the Panel was told that a comparison of a signature which appears to be that of Mr. Liu on Exhibit #8 and his known signatures on Exhibit #4 indicates that they are the same signatures.

It was argued that Mr. Liu had not provided any evidence that he had been "tricked" by the complainants or that his signatures on Exhibit #8 had been forged.

The Prosecutor asserted that the evidence clearly established that Mr. Liu had breached sections 3, 4, 5, 35, 38 and 39 of the Code of Ethics as alleged in RECO's Allegation Statement.

SUBMISSIONS OF THE RESPONDENT

Mr. Liu reiterated that he had not signed the alleged commission rebate agreement marked as Exhibit #8. Mr. Liu proceeded to refer the Panel to the document marked as Exhibit #7, p. 2 and he told the Panel – over the objections of the Prosecutor – that that document contained his real signature.

Mr. Liu recommended to the Panel that its members compare the signature in Exhibit #7, p. 2 to the signature on Exhibit #8.

Further testimony from Mr. Liu

Following certain comments by Mr. Liu and clarification that was sought relating to those comments – which suggested that Mr. Liu was acknowledging that he had actually written the signatures that appeared in Exhibit #8 – the Panel permitted Mr. Liu to retake the witness stand and provide sworn evidence on that issue.

After being cautioned that his affirmation was still in effect and that he was expected to tell the truth, Mr. Liu stated that the signatures appearing on Exhibit #8 (and other copies of the same document in the materials before the Panel) were, in fact, his signatures and that he had written the characters comprising those signatures.

However, for the first time during the Hearing, Mr. Liu testified that he had not signed any written rebate agreement that had been put in front of him by the complainants. He claimed that because his name in English/Chinese is sometimes hard to understand, he wrote those names on *blank sheet of paper* for the complainants to provide clarification and an example of his proper signatures. Mr. Liu asserted that when he wrote his signatures on a single sheet of paper from Buyer B's notebook there was *no other text* on the sheet at that time.

Mr. Liu told the Panel that it is obvious that the other text (e.g. the purported commission rebate agreement which Buyer B had reduced to writing) had been added by someone else at a later time.

Exhibit #8, therefore, was a false document because it purported to present a signed agreement to which Mr. Liu had never actually been a party.

Mr. Liu added that he never read a document in the form of Exhibit #8 and he never made any corrections to it, as Buyer A and Buyer B had claimed at the Hearing.

Mr. Liu stated emphatically that Buyer B was simply lying about everything.

Cross-examination of Mr. Liu by the Prosecutor

Upon further cross-examination, the Prosecutor inquired why Mr. Liu, being registered with RECO since 2010, and a professional and business person, would sign a blank sheet of paper for anyone. Once again, Mr. Liu stated that he had provided copies of

his signature in English and Chinese on a blank piece of paper for the convenience of the complainants.

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

Having carefully considered the testimony of the witnesses at the Hearing, and the documentary evidence, the Panel has arrived at the conclusions outlined below.

The Panel finds that Buyer A, and especially Buyer B, provided convincing evidence at the Hearing that a commission rebate was negotiated between Mr. Liu and the complainants on or about December 17, 2013 and that the agreement itself was reduced to writing by Buyer B on December 19, 2013.

The Panel further finds that, *contrary to his denials*, Mr. Liu was indeed present when Buyer B drafted the commission rebate agreement on December 19, 2013 and that he actually assisted Buyer B in making certain corrections to that agreement before it was signed by him and Buyer B.

The agreement in question is that contained in Exhibit #8 and, in the Panel's view, it constituted a binding agreement between the parties to provide a rebate to the complainants from the commission that Mr. Liu stood to earn upon their successful purchase of the Property.

As such, once he signed the rebate agreement, Mr. Liu was under an obligation to make sure he met his commitments. Payment of a rebate to the complainants was the principal commitment. Mr. Liu failed dismally in meeting that commitment and, in fact, he improperly denied at the Hearing that there was any such agreement. He also improperly asserted that he knew nothing about negotiations to provide a rebate to the complainants.

Given Mr. Liu's eleventh hour admission that the signatures appearing on Exhibit #8 were, in fact, his signatures, and given the evidence presented by the complainants at the Hearing, the Panel finds that the only *credible* explanation for Mr. Liu's signatures being on that document was that a written agreement was presented to him on December 19, 2013 and that *he signed the document as a signatory to the agreement outlined therein.*

The very layout of the signatures on Exhibit #8 is consistent with it being signed after the text above the signatures (outlining the terms of the commission rebate agreement) had already been put on the note paper.

Further, both Buyer A and/or Buyer B testified that Mr. Liu signed the handwritten agreement in their presence, and that there were two different kinds of ink for Buyer B's signature and Mr. Liu's signatures. The explanation which Buyer B gave for the two different inks was an eminently reasonable and convincing one: Buyer B and Mr. Liu each had their own pens when they signed the agreement.

Buyer B was a very credible witness at the Hearing – much more so than Mr. Liu.

Mr. Liu was not only evasive in his testimony but he tried repeatedly during the Hearing to deal with issues other than the single allegation that RECO had made against him: that he had executed a commission rebate agreement and subsequently reneged on his own commitment.

Mr. Liu was consistently reminded during the Hearing that the focus of RECO's allegations and case was the agreement in Exhibit #8.

The Panel also finds that Mr. Liu's eleventh hour attempt to explain how his signatures came to be on the note paper that was marked as Exhibit #8 at the Hearing to be wholly unconvincing. That explanation was, in fact, completely lacking in credibility, and it was improper from the standpoint of fairness in the way that Mr. Liu presented it at the Hearing after closing submissions had been made.

Although the Panel acknowledges that Mr. Liu did not have legal counsel at the Hearing, and that he chose to be assisted in his defence by his own spouse, he asked no questions of Buyer A or to Buyer B about his alleged signing of a blank piece of paper instead of the agreement which was presented as Exhibit #8 at the Hearing.

Mr. Liu's cross-examination of Buyer A or to Buyer B would have been the time to present his version of events, including his assertion that he had signed a blank sheet of paper for the complainants. That proposition, however, was never put before Buyer A or Buyer B by Mr. Liu.

The Panel has concluded that Mr. Liu's explanation about signing a blank sheet of paper was simply unbelievable. Mr. Liu signed a commission rebate agreement that he had freely negotiated with Buyer B, he had reviewed that agreement before signing it, and he had actually corrected the initial draft to make the intent and wording of the document clearer.

In short, the evidence before the Panel that Mr. Liu had signed a written commission agreement was overwhelming, as was the evidence that he had, quite unprofessionally and unacceptably, reneged on his own commitment by failing to pay the rebate to the complainants as promised.

Given the evidence at the Hearing, the Panel finds that Mr. Liu showed a complete lack of integrity in failing to abide by the agreement in Exhibit #8 which he had executed. As such, he breached Section 3 of the Code of Ethics.

Mr. Liu also breached Section 4 of the Code of Ethics in that he failed to promote the best interests of his clients by his conduct. The best interests of the complainants could only be served by Mr. Liu living up to the contractual obligations which he had freely accepted. Further, Mr. Liu breached Section 5 by failing to provide conscientious service to his clients, and by failing to demonstrate reasonable knowledge, skill, judgment and competence in carrying out his professional services.

Mr. Liu breached Section 35 of the Code of Ethics because, in reneging on his contractual obligations to the complainants, he failed to be financially responsible in the conduct of his business.

Section 38 of the Code of Ethics was breached in this case because Mr. Liu failed to use his best efforts to prevent error, misrepresentation or any unethical practice in respect of a trade in real estate. In fact, Mr. Liu's conduct in dealing with his clients was both unethical and unacceptable, as were his persistent assertions at the Hearing that he had not had any negotiations relating to a commission rebate and he had not entered into any commission rebate agreement with the complainants.

The oral and written evidence presented at the Hearing was overwhelming. It established that there was no air of reality to Mr. Liu's defence, a defence which itself changed dramatically as the evidence against him unfolded at the Hearing.

The Panel has also concluded that Mr. Liu breached Section 39 of the Code of Ethics by failing to live up to his agreement to pay the rebate which he had agreed to pay in Exhibit #8. As a result, the Panel has concluded that Mr. Liu acted disgracefully, dishonourably, unprofessionally, and in an unbecoming manner as a registrant under REBBA 2002.

PENALTY

Counsel for the Registrar, *REBBA 2002* to deliver written submissions to the Panel and to the Respondent on the issue of penalty and costs within 15 days of the date on which the Panel's decision and reasons are delivered.

The Respondent shall deliver to the Panel and to Counsel for the Registrar, *REBBA 2002* its written submissions on penalty and costs in response to Counsel for the Registrar, *REBBA 2002*'s submissions within 15 days of the date on which Counsel for the Registrar, *REBBA 2002*'s submissions on penalty and costs are delivered to the Respondent.

Counsel for the Registrar, *REBBA 2002* shall deliver to the Panel and to the Respondent its reply to the written submission on penalty and costs of the Respondent within 5 days of the date on which the Respondent's submissions on penalty and costs are delivered to Counsel for the Registrar, *REBBA 2002*.

If appropriate, submissions to be made on costs and expenses with submissions on penalty.

Any inquiries relating to the delivery of the above-mentioned documents should be directed to the Hearings Coordinator.

The Panel shall deliver its decision on penalty and costs after considering the written submissions of the parties.

[Released: April 25, 2016]



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 -

CHANG LIU (also known as DAVID LIU)

Heard on the 10th day of February, 2017 at Toronto, Ontario in the presence of

Michael Carlson, Counsel for the Registrant, Chang Liu (also known as David Liu)
Maya Sabharwal, Counsel for the Registrar, *Real Estate and Business Brokers Act, 2002*

Douglas Cunningham, Legal Counsel to the Discipline Hearing Panel

DATE OF DECISION: February 10, 2017

ORDER: Fine of \$5,000.00 payable to RECO within six (6) months 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 on or before August 10, 2017.

COSTS AND EXPENSES: No costs awarded

REASONS FOR DECISION

PENALTY

As outlined in its Discipline Decision and Reasons for Decision, the Panel carefully considered the testimony of the witnesses at the Hearing in April 2016, including

significant documentary evidence. After doing so, the Panel concluded that Chang Liu had breached Sections 3, 4, 35, 38 and 39 of the Code of Ethics.

The panel convened on Friday, February 10, 2017 to hear submissions on penalty in the matter of RECO versus Chang (David) Liu.

The panel convened at 10:00 a.m. but prior to hearing any submissions on the issue of penalty, a letter dated February 3, 2017 from Mr. Michael W. Carlson, counsel for Mr. Liu, and was given to panel members.

The letter requested permission to present sworn affidavits as “new or fresh” evidence in this matter even though the panel had long since held the hearing on the merits (in April 2016) and delivered its written reasons on the issue of Mr. Liu’s breach of numerous rules under the *Code of Ethics*.

The Panel adjourned to read the letter and returned to the hearing room to hear submissions from Mr. Carlson and RECO concerning the request to have new evidence put before the Panel. Legal advice from independent counsel to the Panel was also obtained and, in the interests of transparency, that advice was presented by independent counsel to the parties and the parties were given the opportunity to make submissions to the Panel on such advice.

The Panel retired to discuss the legal advice from independent counsel and the submissions of the parties on the issues in Mr. Carlson’s letter, including the request that Mr. Liu be entitled to introduce two affidavits that had apparently been obtained from the complainants in or about September 2016.

The request by Mr. Liu to introduce “new or fresh” evidence in affidavit form, whether to try to re-open the hearing on the merits (after a decision had already been rendered by the Panel) or to have the Panel consider such evidence for the purposes of submissions on penalty, was denied.

With respect to the advice from the Panel's independent counsel, it can be summarized as follows:

If the request to introduce "new or fresh" evidence is characterized as a request by Mr. Liu to re-open a hearing on the merits after the hearing had ended to have the Panel review its own decision, with a view to the Panel revising or altering that decision, the Panel lacked the statutory authority to do so.

The Panel derives its authority from the statutes that govern its proceedings and specifically outline its powers. The Panel has no inherent jurisdiction, as is the case with the Superior Court of Justice.

Any tribunal, such as the Disciplinary Panel, must have a clear statutory basis to review and revise its own decisions or orders. Under section 21.1 of the *Statutory Powers Procedure Act* (the *SPPA*), the Legislature has addressed the issue of a tribunal's power to review all or part of its own decision or order but only under certain circumstances.

To enjoy the power to review and revise its own decisions, a tribunal must first find the "review" to be advisable. Equally, important, the Rules of the tribunal *made under section 25.1 of the SPPA* must "deal with the matter", that is, support the kind of review being requested.

Further, any review that is authorized must take place within a reasonable time after the decision or order is made. Absent these requirements, a tribunal will not have any authority to review its own decisions.

In the case of RECO Panels, and assuming that the *Rules of Practice* of the Panels are Rules which have been passed under section 25.1 of the *SPPA*, no Rules have been passed that specifically permit a Panel to review its own decisions after a hearing on the merits, to confirm, vary, suspend or cancel a decision or order on the merits.

The only "power of review" provided for in the Panel's *Rules of Practice* relates to interlocutory decisions, i.e. Decisions rendered on motions before the Panel during the proceeding itself. Such decisions are procedural decisions made by the Panel in the course of a proceeding before it.

Section 7.08 of the *Rules of Practice* permits a Panel to allow a motion participant to renew or re-argue a matter that has previously been determined on a motion *provided that the Panel has granted permission to the party to do so*. Alternatively, if an interlocutory order from a motion provides that the matter may be renewed or re-argued at a later date, the power to renew or re-argue a motion will exist with respect to the issues previously argued on a motion.

The request by Mr. Liu to introduce new or fresh evidence does not involve a request to renew argument or reargue issues arising previously on a motion. The Panel is not dealing with any request to review or re-argue an interlocutory decision.

A final decision on the merits has been rendered after the hearing itself ended in April 2016 and if Mr. Liu is requesting the Panel to review its own decision (and presumably change its decision on the merits) on the basis of new or fresh evidence, the Panel lacks statutory authority to do so.

Further, even if the request by Mr. Liu is characterized more narrowly as a request to introduce new evidence not to challenge or have findings of liability under the *Code of Ethics* changed, but only to support submissions on penalty, the Panel lacks authority to permit the introduction of such evidence.

Submissions on penalty are precisely that: *submissions* on penalty. Those submissions are ordinarily based on the Panel's decision and reasons from the hearing on the merits, and any applicable principles from RECO decisions or other legal sources (e.g. legal literature or other case law).

It would be improper for the Panel to permit a party to introduce new evidence into the process when submissions on penalty are being obtained. Here, Mr. Liu seeks to introduce new evidence, allegedly from the complainants themselves, in the form of affidavit evidence. Leaving aside the lack of statutory authority or provisions under the Panel's *Rules* providing for such new evidence, the issue of fairness also militates against it: the opposing party cannot possibly cross-examine a document, such as an affidavit, put before the Panel.

In short, the Panel has no jurisdiction to review its own decision on the merits after it has been delivered to the parties and it has no authority to conduct a review of same to confirm, vary, suspend, or cancel such a decision. Further, it has no jurisdiction to permit new or fresh evidence to be put before the Panel as part of a party's submissions on penalty.

After rendering its decision on the request to introduce new evidence into the hearing at the stage of submissions on penalty, the Panel directed the parties to make their submissions.

Submissions of the Prosecutor on behalf of the Registrar

The Prosecutor emphasized two cases for basic principles on the issue of penalty, the Newfoundland Medical Board case, and Suzette Thompson decision (from a RECO hearing), for the Panel's consideration. The factors in those authorities were outlined for the Panel. It was submitted that Mr. Liu's infractions were serious, that all trade in real estate must be done in writing, and that Mr. Liu had clearly reneged on the obligations which he had voluntarily assumed.

The complainants had looked to Mr. Liu to serve and protect their interests but the rebate provided for in a written and signed commission (rebate) agreement was not provided as promised. Having negotiated and signed a commission rebate agreement, the complainants were entitled to receive the rebate they had bargained for.

Mr. Liu's conduct that the hearing was marked by contradictory evidence and he went in circles in his testimony, including how his signature came to be on the document that was presented as the commission rebate agreement.

RECO stated that the penalty in this case needed to reflect the principle of general deterrence, based on the (unsupported) assertion by the Prosecutor that cases involving registrants who renege on commission rebate arrangements are "more common" than one would like to see.

Four RECO decisions were also provided by the Prosecutor as examples of similar offences and for the purposes of suggesting what an appropriate monetary penalty might be.

The Prosecutor submitted that a monetary penalty of \$5,000.00 and an order that Mr. Liu take and successfully complete the Real Estate Institute of Canada Ethics and Business Practice course would be appropriate in this case.

Submissions on behalf of the Registrant, Mr. Liu

On behalf of Mr. Liu, Mr. Carlson submitted that Mr. Liu committed a single act which resulted in a finding that he had breached sections of the *Code of Ethics*. Reference was made to page 10 in the Panel's decision and reasons to point out that the complainants themselves were generally satisfied with the services that Mr. Liu had provided to them *except* for his failure to give the commission rebate to them.

Mr. Carlson emphasized that Mr. Liu had no previous complaints against him or findings of liability. Mr. Carlson stated that there was no real emotional impact on the complainants as a result of Mr. Liu's conduct, but he conceded that there was a financial impact on them; Mr. Carlson advised the Panel that the complainants would have received a rebate of \$7,536.00 if it had been paid by Mr. Liu.

It was also submitted, and the Panel was mindful that there was no supporting evidence on this point that Mr. Liu had not understood the RECO hearing process, that he did not know how to properly cross-examine witnesses, and that Mr. Liu himself had limited facility in English.

Mr. Carlson submitted that Mr. Liu was not a “rogue salesperson” and that what had transpired with the complainants had been an “isolated incident”. As a result, the Panel was told that a monetary penalty of *more than* \$5,000.00 to \$6,000.00 would be too severe and inappropriate in the circumstances.

Findings by the Panel on the Issue of Penalty

Having considered the principles outlined in the case law, including previous RECO decisions provided by the Prosecutor, and for the reasons relating to liability outlined in the Panel’s decision and reasons from the hearing on the merits, the Panel has concluded that the following order is appropriate:

1. Mr. Liu is ordered to pay a fine of \$5,000.00 to RECO within 6 (six) months of RECO sending this decision to him; and
2. Mr. Liu is ordered to successfully complete the Real Estate Institute of Canada (REIC) “REIC 2600: Ethics and Business Practice” course and provide confirmation of successful completion within 6 (six) months of RECO sending this decision to him.

The principle of *specific* deterrence is particularly important in this case. It was clear to the Panel at the hearing that Mr. Liu’s evidence was conflicting, contradictory and, at times, illogical as to how and why his signature came to be on the document that confirmed the commission rebate. For a considerable time, Mr. Liu denied that the signature on the document was his own.

However, when the circumstances of the preparation of the rebate agreement were explained by the complainants, and the evidence appeared to be overwhelming that Mr. Liu not only participated in the creation of that document, but that he had also signed it, a very different story was presented by Mr. Liu, one which, again, attempted to absolve him of any responsibility.

Mr. Liu claimed that he had put his name and signature on a blank piece of paper, only to have someone else later draft a commission rebate agreement above his name and signature on the paper. Thus, Mr. Liu claimed at the hearing in April 2016 that someone else had conducted him or herself inappropriately and, in fact, that *unidentified* person had tried to deceive not only him but also the Panel.

The Panel finds that Mr. Liu's conflicting evidence and unbelievable account of how the rebate agreement came into existence underscores the importance of specific deterrence in the circumstances. According to Mr. Liu in April 2016, it was the complainants who were lying about everything.

Since the Prosecutor has indicated that the Registrar believes that a fine of \$5,000.00 is appropriate, the Panel sees no reason to take issue with that submission, especially in light of the submissions of counsel for Mr. Liu, which accept that a penalty of \$5,000.00 to \$6,000.00 is within the range that Mr. Liu himself might expect to pay.

As no costs were requested, no costs are ordered.

[Released: March 14, 2017]