



Real Estate Council of Ontario

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**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 -**

**DAWN C. KENDRICK**

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**DISCIPLINE DECISION AND REASONS FOR DECISION**

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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:

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**FINDINGS:** In violation of Sections 3, 4 and 5 of the *REBBA 2002* Code of Ethics.

**ORDER:** Fine of \$1,000.00 payable to RECO on or before August 18, 2017.

Successful completion of any RECO course involving clauses, and provide RECO with confirmation of successful completion before Dawn Kendrick's next renewal date.

**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. Dawn Kendrick is and was, at all relevant times, registered as a salesperson under the Act with Brokerage A.

2. On or about March 2014, Buyer A and Buyer B (the "Buyers") contacted Ms. Kendrick regarding a property municipally located at 1-A Avenue, in A-Town (the "Property"). Ms. Kendrick was the listing sales representative. The sale price for the Property was \$199,900.00. The Property was marketed as "newly renovated".
3. On or about March 18, 2014, Ms. Kendrick showed the Property to the Buyers. The Buyers were unrepresented. During the viewing of the Property, the Buyers noticed that a dehumidifier was running in the basement and they also noticed a hole in the wall and that a window needed replacing.
4. On or about March 22, 2014, Ms. Kendrick, represented the Buyers with respect to the purchase of the Property in the amount of \$185,000.00 with a closing date of July 1, 2014 (the "First Agreement of Purchase and Sale"). The offer was prepared by Ms. Kendrick.
5. On or about March 24, 2014, Ms. Kendrick contacted the Buyers and confirmed that she spoke to the seller about the foundation and that the seller had fixed the hole in the basement.
6. There were several counter offers to First Agreement of Purchase and Sale, however, on or about March 26, 2014, a final offer was accepted in the amount of \$190,000.00 with a new closing date of June 30, 2014. The Buyers provided a deposit of \$500.00. The First Agreement of Purchase and Sale was conditional upon the Buyers obtaining:
  - i) Financing within 10 days;
  - ii) Home inspection within 10 days; and
  - iii) Satisfactory insurance coverage within 10 days.
7. On or about April 14, 2014, the Buyers and the seller signed an Amendment to the First Agreement of Purchase and Sale. The amendments consisted of:
  - i) Deleting Buyer A name and inserting Buyer B and Buyer C and Buyer D as buyers;
  - ii) Conditional upon the Buyers obtaining finance on or before April 16, 2014;

- iii) Conditional upon home inspection on or before April 16, 2014; and
  - iv) Conditional upon obtaining satisfactory insurance coverage on or before April 16, 2014.
8. On or about April 11, 2014, Ms. Kendrick e-mailed Individual A of Business A requesting a partial home inspection for the subject Property. In the e-mail, Ms. Kendrick stated the following:
- “Would you be available on Monday to do a partial home inspection for the subject property mentioned above? This is the home we spoke about a while ago. It has been totally renovated the mortgage broker told them they had to have an inspection. Only concern is the basement.”*
9. On or about May 30, 2014, the Buyers signed a Mutual Release to the First Agreement of Purchase and Sale as they were unable to obtain financing.
10. After signing a Mutual Release on May 30, 2014, the Buyers and the seller enter into an Agreement to Lease. The terms of the Agreement to Lease were, *inter alia* consists of:
- i) A lease term of 6 (six) months commencing on July 1, 2014;
  - ii) A deposit of \$10,000.00 payable to the seller; and
  - iii) Schedule A to Agreement to Lease – “This Lease Agreement becomes a Schedule A to the Agreement of Purchase for the subject Property”.
11. On or about May 30, 2014, the Buyers and the seller also entered into an Agreement of Purchase and Sale with a closing date of November 30, 2014 (the “Second Agreement of Purchase and Sale”). Schedule A of the Second Agreement of Purchase and Sale contained the following provisions:
- i) Buyers will be renting the subject property for \$1,000.00 plus \$200.00 for taxes, for a total of \$1,200.00 per month. Occupancy will commence on July 1, 2014;
  - ii) Buyers will be fulling(sic) responsibility for the property including maintenance and any repairs;

- iii) Buyers has completed a home inspection on the property and is satisfied with the report; and
- iv) The deposit will be held by the seller and will be deducted off the purchase price as part of downpayment (sic) on closing. Buyer and seller have agreed that the deposit is non-refundable if buyers do no close the transaction at the time agreed upon the buyer forfeits the deposit to the seller.

12. The Second Agreement of Purchase and Sale also stated that the deposit of \$10,000.00 was payable to Business B, who was the seller of the property.

13. In addition, the Second Agreement of Purchase and Sale was silent on the following conditions:

- i) Buyers obtain financing and a satisfactory insurance coverage;
- ii) Buyers to obtain insurance; and
- iii) Buyers would lease the Property on a rent to own basis.

14. On or about November 30, 2014, the Buyers requested an Amendment to the Second Agreement of Purchase and Sale. The amendments consisted of deleting the closing date of November 30, 2014 and inserting a closing date of January 30, 2015. The seller did not sign the extension.

15. On or about January 24, 2015, the Brokerage, acting through Ms. Kendrick, on behalf of her seller client presented an Amendment to the Second Agreement of Purchase and Sale and Mutual Release to the Buyers.

16. On or about January 26, 2015 the broker of record of Brokerage A advised the Buyers that the seller will not accept their counter offer.

17. The sale of the Property did not close and the deposit of \$10,000.00 was retained by the seller.

18. Ms. Kendrick's action of reducing to writing the deposit of \$10,000.00 into the name of the seller rather than in the name of brokerage, in the APS is contrary to sections 3, 4 and 5 of the Code of Ethics.

19. Ms. Kendrick's action of failing to reduce to writing the condition precedent of obtaining finance in the Second Agreement of Purchase and Sale exposed her Buyer clients to be at risk of losing their deposit, contrary to section 4 of the Code of Ethics.

#### AGREED PENALTY

DAWN C. KENDRICK, the Respondent, be ordered to pay a penalty of \$1,000.00 on or before August 18, 2017.

In addition to the above penalty, the Respondent must enroll in any RECO course involving clauses, and provide proof of successful completion of the course before Dawn Kendrick's next renewal date.

By initials below, I, DAWN C. KENDRICK, 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, DAWN C. KENDRICK, 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, DAWN C. KENDRICK, 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 and 5 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. DAWN C. KENDRICK is Ordered a Fine of \$1,000.00 payable to RECO on or before August 18, 2017.

2. DAWN C. KENDRICK is Ordered to successfully complete any RECO course involving clauses and provide RECO with confirmation of successful completion of the course before Dawn Kendrick's next renewal date.

*[Released: June 6, 2017]*