



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 -

ARTHUR TKACZYK

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 2(1) with respect to section 26(1), 3, 4 and 5 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$2,500.00 payable to RECO on or before August 31, 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. Arthur Tkaczyk ("Tkaczyk") is and was, at all material times, registered as a salesperson under the Act with the Brokerage A.
2. On or about November 13, 2015, Tkaczyk on behalf of Brokerage A representing the sellers, listed for sale the residential property located at 1-A Crescent in City A (the "Property") for \$229,900.00.

3. On November 15, 2015, at 12:16 a.m., Registrant A, salesperson under the Act, by e-mail, submitted an offer to purchase the Property for \$225,000.00 on behalf of her clients (the "First Offer"). The First Offer was irrevocable until 9:00 p.m. on November 15, 2015. In the e-mail, Registrant A requested that Tkaczyk inform her when any other offers are received.
4. On November 15, 2015, at 6:29 p.m., Registrant B, salesperson under the Act, having been informed by Tkaczyk that he had received the First Offer, submitted an offer to purchase the Property for \$229,900.00 on behalf of her clients (the "Second Offer"). The Second Offer was accepted at 8:30 p.m. on November 15, 2015.
5. Tkaczyk failed to inform Registrant A of the Second Offer, thereby depriving the potential buyers of the First Offer the opportunity to submit a competitive offer for the Property and likewise denying the sellers of the Property the opportunity to consider two offers in direct competition to maximize the sale price of the Property, contrary to sections 2(1) with respect to section 26 (1), 3, 4 and 5 of the Code of Ethics under the Act (the "Code of Ethics").

SUMMARY OF AGREEMENTS

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

Brokers and Salespersons

2. (1) A broker or salesperson shall not do or omit to do anything that causes the brokerage that employs the broker or salesperson to contravene this Regulation.

With respect to

Competing Offers

26. (1) If a brokerage that has a seller as a client receives a competing written offer, the brokerage shall disclose the number of competing written offers to every person who is making one of the competing offers, but shall not disclose the substance of the competing offers.

Fairness, Honesty, Etc.

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

Best Interests

4. A registrant shall promote 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.

AGREED PENALTY

ARTHUR TKACZYK, the Respondent, be ordered to pay a penalty of \$2,500.00 on or before August 21, 2017.

By initials below, I, ARTHUR TKACZYK, 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, ARTHUR TKACZYK, 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, ARTHUR TKACZYK, 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 2(1) with respect to section 26(1), 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. ARTHUR TKACZYK is Ordered a Fine of \$2,500.00 payable to RECO on or before August 31, 2017.

[Released: June 6, 2017]