



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 -**

**MICHAEL LOEWITH**

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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, 5 and 39 of the *REBBA 2002* Code of Ethics.

**ORDER:** Fine of \$5,000.00 payable to RECO on or before October 31, 2017.

**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. Michael Loewith is a member of RECO and is a sales representative registered under the Act. At all material times, Loewith was registered as a salesperson with Brokerage A, a brokerage registered under the Act. Loewith is currently registered with Brokerage B.
2. Registrant A is registered as a salesperson under the Act and is currently registered with Brokerage C, a brokerage registered under the Act.

3. On or about December 8, 2014, the Seller entered into a Listing Agreement with Brokerage A to list his property municipally located at 1-A Avenue, City A, Ontario with Loewith as their listing salesperson.
4. The Property was listed on the Toronto Real Estate Board Multiple Listing Service<sup>®</sup> for \$1,099,000.00 (the “MLS<sup>®</sup> listing”).
5. The salient details of the MLS<sup>®</sup> listing were the following:
  - a. Outstanding Tri-plex situated on an exceptional lot
  - b. Potential income: 3 bed main \$1,500.00, 3 bed second \$1,500.00 and 2 bed lower \$1,200.00
  - c. Three kitchens
  - d. Expiry date: April 30, 2015
  - e. Cooperating brokerage commission of 2.5%
6. On or about December 12, 2014, Loewith sent a text message to the Seller advising that he was going away for a few weeks with his family and further advised that *“so I can speak to you any day after 5:00pm...Individual A is my assistant and you can call her anytime if you need anything”*.
7. After having the Property listed for few days the Seller called Loewith’s office and insisted that the Property be taken off the market immediately.
8. On or about December 15, 2014, the Seller and Brokerage A by mutual consent agreed to suspend the listing until January 15, 2015. On the same date, the Seller also signed a Cancellation of Listing Agreement dated January 18, 2015.
9. On or about January 13, 2015, the Seller received the following text message from Loewith:

*“Hope things are good. We are back from vacation and wanted to get started with your house. Are you and your wife available to meet and we can put a new strategy in place?”*
10. On or about January 19, 2015, Loewith, on behalf of Brokerage A, re-listed the Property for sale (The “Second Listing Agreement”). The salient terms of the Second Listing Agreement were the same to that of the MLS<sup>®</sup> listing as noted in paragraph 4 and 5 above.
11. On or about March 24, 2015, the Seller met with Loewith and his assistant Individual A. At that meeting, Loewith presented an offer from Registrant A’s buyer client to purchase the Property for under \$1million (the “First Offer”). After some discussion with his spouse, the Seller rejected the offer.
12. On or about March 25, 2015, Registrant A’s buyer clients re-submitted their offer to that of the full asking price of \$1,099,000.00 (the, “Second Offer”). The salient details of the Second Offer consisted of:
  - a. Closing date: April 30, 2015, remarks *“Upon Completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement”*;
  - b. Sale Price: \$1,099,000.00;

- c. Schedule A of the Agreement of Purchase and Sale (the "APS") states *"the seller agrees to give all keys to the above property to the Buyer's Lawyer on closing....and to make sure the property is left in a clean and broom-swept conditions, and all the boxes, garbage debris and personal belongings are removed from the premise on closing date of this transaction."*
13. The Property did not close on April 30, 2015, for the Seller and his tenants were unable to give a vacant possession.
14. After many back and forth between the lawyers, the Property closed on May 13, 2015.
15. After the closing of the Property, it was discovered that Loewith made the following amendments without obtaining authorization from the Seller:
  - a. On or about March 19, 2015, Loewith amended the MLS<sup>®</sup> listing by changing the potential rents of each units to \$1,800.00 a month for first floor, \$1,800.00 for second and \$1,300.00 for the lower level;
  - b. On or about May 27, 2015, Loewith deleted the potential income under the client remarks and further amended the MLS<sup>®</sup> listing by changing the number of kitchens from three to one;
  - c. Loewith further altered the MLS<sup>®</sup> listing by deleting the word "Tri-plex" from the description of the Property under client remarks.

#### SUMMARY OF AGREEMENTS

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

16. Loewith failed to treat every person he dealt with in the course of a trade in real estate fairly, honestly and with integrity by failing to ensure that the Property description provided to him was accurate, or in the alternative, upon discovering that the description of "tri-plex" was incorrect, he failed to advise the Seller of his discovery; he further failed to obtain instruction from the Seller to delete the description of "tri-plex", thereby breaching sections 3 and 5 of the Code of Ethics.
17. Without informing or obtaining the consent of the Seller, Loewith altered the MLS<sup>®</sup> listing by changing the potential income of each units and further changing the number of kitchens from three to one and further removing the line for potential income; thereby breaching sections 3, 4, 5 and 39 of the Code of Ethics.

#### AGREED PENALTY

MICHAEL LOEWITH, the Respondent, be ordered to pay a penalty of \$5,000.00 on or before October 31, 2017.

By initials below, I, MICHAEL LOEWITH, 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, MICHAEL LOEWITH, 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, MICHAEL LOEWITH, acknowledge that I exercised 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, 5 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. MICHAEL LOEWITH is Ordered a Fine of \$5,000.00 payable to RECO on or before October 31, 2017.

*[Released: August 10, 2017]*