



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 -

RHODORA COLMENAR XEREZ-BURGOS

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), 3, 4, 30, 35, 38 and 39 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$12,500.00 payable to RECO on or before January 24, 2018.

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 January 24, 2018.

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

Registration background

1. Ms. Rhodora Colmenar Xerez-Burgos is and was at all relevant times registered as a salesperson under the Act.
2. On or about October 19, 2011, to on or about March 23, 2015, Ms. Xerez-Burgos was registered with the Brokerage, Brokerage A.
3. On or about February 8, 2016, Ms. Xerez-Burgos became registered as a salesperson with Brokerage B.
4. At the time of these occurrences, Ms. Xerez-Burgos was registered with Brokerage A.

1-A Road Transaction

5. During the month of February 2013, Ms. Xerez-Burgos acted as the buyer representative for the complainant, Buyer A during the purchase of a property, municipally located at 1-A Road, City A.
6. At some time before closing, Buyer A advised Ms. Xerez-Burgos that he did not have enough money to close as scheduled and requested her assistance. Ms. Xerez-Burgos contacted Registrant A, a real estate sales representative with Brokerage C.
7. Registrant A agreed to provide a loan to Ms. Xerez-Burgos's client in the amount of \$30,000.00.
8. Ms. Xerez-Burgos acted as the go between-person during this transaction. Buyer A and Registrant A had not met or spoken to each other.
9. Sometime thereafter, Buyer A and Registrant A attended the office of Registrant A's lawyer and executed a loan agreement in the amount of \$30,000.00. The loan agreement was prepared as a second mortgage ("Second Mortgage Loan") on the property which would become due in six months. The funds were deposited in Buyer A's account less fees.
10. On the same date that Buyer A received the Second Mortgage Loan from Registrant A, he received a loan from a family member which he used towards the closing of 1-A Road.
11. The Buyer A contacted Ms. Xerez-Burgos and informed her that he no longer required the Second Mortgage Loan he had received from Registrant A.
12. Rather than returning the Second Mortgage Loan to Registrant A, Ms. Xerez-Burgos advised the Buyer A that she would assume the Second Mortgage Loan and promised to pay it off within the prescribed time of six months.
13. On or about April 30, 2013, the Buyer A and Ms. Xerez-Burgos drafted an assumption of personal debt (the "Agreement") whereby she assumed the Second Mortgage Loan in the amount of \$30,000.00.
14. Shortly after signing the Agreement, the Buyer A transferred the funds to Ms. Xerez-Burgos's account.

15. On or about January 30, 2014, the Buyer A received a letter from Registrant A advising the Second Mortgage Loan would be maturing on February 4, 2014 and, if payment was not received on or about February 4, 2014, steps would be taken to sell 1-A Road under Power of Sale.
16. The Buyer A proceeded to contact Ms. Xerez-Burgos and demanded an explanation as to re-payment of the Second Mortgage Loan, pursuant to the signed Agreement.
17. On or about January 30, 2014, the Buyer A learned that Ms. Ms. Xerez-Burgos made two loan payments by cheque and that both were rejected due to insufficient funds.
18. At no time did Ms. Ms. Xerez-Burgos advise Buyer A that she was unable to fulfil the terms under the Agreement.

2-B Street, City B Transaction

19. On or about June 20, 2014, Ms. Xerez-Burgos represented her sister, Buyer B during the purchase of a property municipally located at 2-B Street, City B.
20. The Agreement of Purchase and Sale (the "APS") was accepted on or about June 21, 2014. The details of the APS were, *inter alia*, as follows:
 - a. Purchase Price: \$951,000.00;
 - b. The completion date was August 29, 2014; and
 - c. The offer was conditional on financing (20 days) and inspection (4 days).
21. The listing office was Brokerage D.
22. During the trade for 2-B Street, Ms. Xerez-Burgos made several Amendments to the APS and at no time did Ms. Xerez-Burgos submit the Amendments to the APS to Brokerage A.
23. Brokerage A made several attempts to obtain the amendments from Ms. Xerez-Burgos and it was not until near the end of 2014 that Ms. Xerez-Burgos verbally informed her broker of record that the financing was almost in place and that the deal would close in early 2015.
24. Sometime in February 2015, her broker of record made further inquiries regarding the trade. Once again, Ms. Xerez-Burgos verbally informed her broker of record that the trade had closed. Once more, Ms. Xerez-Burgos was again asked to produce the paperwork associated with the trade including the required FINTRAC report. Ms. Xerez-Burg informed that the lawyers had been dealing with the matter and that she was not in possession of any paperwork. Ms. Xerez-Burgos did not inform her broker of record of who the lawyers were until several months after the date of the offer.
25. Sometime in February 2015, Brokerage A learned that Ms. Xerez-Burgos had received an \$18,000.00 advance on her commissions from the seller in an effort to pay her mortgage, and that the cheque received by Brokerage A for the expected commissions would be \$18,000.00 less than the invoiced amount.
26. The seller's lawyer forwarded a copy of a Loan Agreement corroborating the \$18,000.00 received by Ms. Xerez-Burgos to Brokerage A. Included in the Loan Agreement was a

clause indicating that the loan would be guaranteed by Brokerage A by way of a signed Direction.

27. Upon discovering the content of the Loan Agreement, Brokerage A requested that Ms. Xerez-Burgos remit the payment of \$18,000.00 to Brokerage A. Included in the disbursements was a payment to the Ministry of Finance in relation to a garnishee issued to Brokerage A against Ms. Xerez-Burgos. The garnishee was issued due to an outstanding loan from Registrant A to Ms. Xerez-Burgos.
28. Ms. Xerez-Burgos repaid the sum of \$18,000.00 to Brokerage A in three instalments.
29. It was not until March 4, 2015 that Brokerage A was able to obtain the name of the buyer's lawyer from Brokerage D and requested the missing paperwork. The paperwork was received on or around March 16, 2015.
30. Such other allegations as may arise from any position taken by Ms. Xerez-Burgos at any hearing of this matter.

SUMMARY OF AGREEMENTS

It is agreed:

1. With respect to the 1-A Road transaction, Ms. Xerez-Burgos' failure to comply with the Agreement, as assumed by the Second Mortgage, placed a consumer in a position to have his property claimed under power of sale proceedings, thereby breaching sections 3, 4, 35 and 39 of the Code of Ethics.
2. With respect to the 2-B Street transaction, Ms. Xerez-Burgos' failure to submit the required trade documents for 2-B Street, to the brokerage that employs her, thereby caused her employing brokerage to contravene section 2 (1) with respect to section 30 of the Code of Ethics.
3. With respect to the 2-B Street transaction, by accepting a commission advance, Ms. Xerez-Burgos caused, or potentially caused, Brokerage A to have violated the Ministry of Finance garnishee agreement issued to Brokerage A against Ms. Xerez-Burgos; thereby contravening sections 35, 38 and 39 of the Code of Ethics.
4. With respect to the 2-B Street transaction, Ms. Xerez-Burgos' decision to enter into a Loan Agreement, without obtaining a guarantee from Brokerage A by way of a signed Direction, amounted to an unprofessional, unethical, dishonourable and/or unbecoming act by a registrant, thereby contravening sections 38 and 39 of the Code of Ethics.

AGREED PENALTY

RHODORA COLMENAR XEREZ-BURGOS, the Respondent, be ordered to pay a penalty of \$12,500.00 on or before January 24, 2018.

In addition to the above penalty, Respondent must enroll in the Ethics and Business Practice course provided by the Real Estate Institute of Canada (REIC), and provide proof of successful completion of the course on or before January 24, 2018.

By initials below, I, RHODORA COLMENAR XEREZ-BURGOS, 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, RHODORA COLMENAR XEREZ-BURGOS, 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, RHODORA COLMENAR XEREZ-BURGOS, 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), 3, 4, 30, 35, 38 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. RHODORA COLMENAR XEREZ-BURGOS is Ordered a Fine of \$12,500.00 payable to RECO on or before January 24, 2018.
2. RHODORA COLMENAR XEREZ-BURGOS 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 on or before January 24, 2018.

[Released: September 6, 2017]