



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 -**

**ARLENE LINDSAY**

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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 4 and 5 of the *REBBA 2002* Code of Ethics.

**ORDER:** Fine of \$5,000.00 payable to RECO on or before May 1, 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**

1. Arlene Lindsay ("Lindsay") is and was at all relevant times registered as a Salesperson with Brokerage A.
2. The Complainant is and was at all relevant times, the buyer of a property municipally known as 1-A Street, City A (the "Property").

3. At all material times, Lindsay acted as the Complainant's representative.
4. On or about Saturday June 4, 2016, Lindsay attended with the Complainant at the Property for a showing.
5. The Property was listed at an asking price of \$359,900.00.
6. After the showing, the Complainant expressed some interest in purchasing the Property.
7. Offers to purchase the Property were being held off until Wednesday June 8, 2016.
8. Lindsay proceeded to contact the listing representative and ask if there were any offers on the Property.
9. On or about June 8, 2016, the listing representative informed Lindsay that there were no registered offers on the Property, however he was aware of a "forthcoming" offer and scheduled second showings.
10. Lindsay proceeded to send the Complainant a text message as follows: *"They have 1 offer on 1-A Street and a couple of people going back for second visit. I am going to ck with them again at 3:00. We have till 5:00 pm to submit an offer if you choose. Will call you after 3:00"*.
11. After the Complainant received Lindsay's text message, and with the belief that there was a competitive offer on the Property, the Complainant decided to offer \$5,100.00 above the asking price. The Complainant instructed Lindsay to prepare and submit an offer at \$365,000.00 with no financing clause and no inspection clause.
12. On or about June 8, 2016, Lindsay submitted an offer to purchase the Property, in accordance with the Complainant's instruction.
13. Lindsay did not confirm if a registered offer was received on the Property, before submitting the Complainant's offer to purchase, despite being aware that the Complainant offered \$5,100.00 above asking, and removed two conditions, on the belief that her offer was in competition.
14. The Complainant's offer was accepted.
15. On the morning after the Complainant's offer was accepted, she changed her mind and attempted to withdraw from the Agreement of Purchase and Sale.
16. The seller refused to sign a mutual release and informed that she had committed to another property.
17. Lindsay conveyed incorrect and/or incomplete information to the Complainant, when she informed that there was 1 offer on the Property and failed to confirm if the said offer was ever registered, before submitting the Complainant's offer. The Complainant's offer was submitted above asking and without a financing

condition and inspection condition to compete however there was no competition. Lindsay's conduct thereby violated sections 4, and 5 of the Code of Ethics under the Act ("the Code").

#### AGREED PENALTY

ARLENE LINDSAY, the Respondent, be ordered to pay a penalty of \$5,000.00 on or before May 1, 2018.

By initials below, I, ARLENE LINDSAY, 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, ARLENE LINDSAY, 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, ARLENE LINDSAY, 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 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. ARLENE LINDSAY is Ordered a Fine of \$5,000.00 payable to RECO on or before May 1, 2018.

*[Released: November 15, 2017]*