



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 -

JOHN POWELL

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 Section 2(1) in respect of Sections 25, 26 (1); and Sections 3, 4, 5, 17, 38, and 39 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$15,000.00 payable to RECO on or before December 29, 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. John Powell is and was at all relevant times registered under the Act as a Salesperson, employed within the meaning of the Act by Brokerage A (the "Brokerage").

2. On or about January 18, 2016, Mr. Powell was retained to list a commercial property located at 1-A Street, City A (the “Property”) for sale on behalf of his client (the “Seller”). A Seller Representation Agreement made by him on behalf of the Brokerage dated January 18, 2016 provided for total commission payable as follows “4 % of the sale price of the Property or 3% should the Property be sold directly by the Listing Agent” (hereafter, the “commission reduction agreement”). That Seller Representation Agreement also authorized the Brokerage to pay co-operating brokerage commission of 2.25 % of the sale price of the Property.
3. Between the dates of January 20, 2016 – January 29, 2016, nine offers were received by the Seller, three of which were resubmitted for a total of 12 offers received on the Property. One of the offers was from his own potential buyer client and that of the Brokerage.
4. The Complainant, who was at all relevant times registered as a Broker under the Act, submitted an offer on or about January 20, 2016 in the amount of \$4,555,000.00 on behalf of his buyer client, Buyer A.
5. On or about January 21, 2016, a competing buyer produced an offer and asked Mr. Powell to represent him in presenting the offer on the Property, which Mr. Powell did.
6. On February 1, 2016, the Property was sold to Mr. Powell’s buyer client. A Chart below illustrates the offers received and ultimately the offer that was accepted.

Offer Date	Buyer	Price Offered	Representative/ Brokerage	Resubmitted Offer
Jan. 20/16	Buyer A	\$4,555,000.00	Complainant/ Representative A	\$4,775,000.00
Jan. 21/16	Buyer B	\$4,600,000.00	Respondent/ Representative B	N/A
Jan. 21/16	Buyer C	\$4,400,000.00	Representative C	N/A
Jan. 25/16	Buyer D	\$4,580,000.00	Representative D	N/A
Jan. 25/16	Buyer E	\$4,200,000.00	Representative E	N/A
Jan. 26/16	Buyer F	\$4,260,000.00	Representative F	N/A
Jan. 27/16	Buyer G	\$4,600,000.00	Representative G	\$4,600,000.00
Jan. 26/16	Buyer H	\$4,300,000.00	Representative B	N/A
Jan. 26/16	Buyer I	\$4,470,795.00	Representative I	\$4,685,000.00

7. Mr. Powell advised re competing potential buyer representatives that he had passed the relevant offer on to the seller who was “reviewing all offers presented”.
8. Mr. Powell advised the Complainant and other buyer representatives that there were multiple offers received, and advised one of the buyer representatives of the number of offers received. However, at no material time did Mr. Powell inform the Complainant, Representative C, Representative D or Representative I about the number of offers received, contrary to Section 2(1) in respect of Section 26(1) of the Code of Ethics to the Act (the “Code of Ethics”) and/or Sections 3, and/or 4, and/or 5 of the Code of Ethics.
9. When on January 28, 2016, Representative D specifically inquired about the number of competing offers, Mr. Powell responded “not sure but over 5” and nothing else, but did not confirm or follow up with the exact number of offers on the Property contrary to Section 5 of the Code of Ethics and/or Section 38 of the Code of Ethics in respect only of the obligation to use best efforts to prevent error or misrepresentation.
10. While Mr. Powell advised Buyer H, a representative with the brokerage that one of the competing offers was from his client, at no material time did Mr. Powell inform the Complainant, Representative C , Representative D, or Representative I that one of the competing offers was from his client and that of the Brokerage, contrary to Sections 3 and/or 4, and/or 5, and/or 17 of the Code of Ethics and/or Section 38 of the Code of Ethics in respect only of the obligation to use best efforts to prevent error, misrepresentation or unethical practice.
11. At no material time did Mr. Powell inform competing potential buyer representatives of the commission reduction agreement, contrary to Section 2(1) in respect of Section 25 of the Code of Ethics, and/or Sections 3 and/or 4, and/or 5 of the Code of Ethics and/or Section 38 of the Code of Ethics in respect only of the obligation to use best efforts to prevent error, misrepresentation or unethical practice, and/or Section 39 of the Code of Ethics.

AGREED PENALTY

JOHN POWELL, the Respondent, be ordered to pay a penalty of \$15,000.00 on or before December 29, 2017.

By initials below, I, JOHN POWELL, 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, JOHN POWELL, 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, JOHN POWELL, 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 Section 2(1), in respect of Sections 25, 26(1); and Sections 3, 4, 5, 17, 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. JOHN POWELL is Ordered a Fine of \$15,000.00 payable to RECO on or before December 29, 2017.

[Released: December 5, 2017]