



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 -**

**SANJIV GUPTA**

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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, 5, 6(1), 21(1), 29, 38 and 39 of the *REBBA 2002* Code of Ethics.

**ORDER:** Fine of \$13,500.00 payable to RECO on or before June 6, 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. Mr. Gupta was at all relevant times registered under the Act as a Broker, employed within the meaning of the Act by Brokerage A (the "Brokerage"). He is currently the Broker of Record at Brokerage B.

2. Mr. Gupta, on behalf of the Brokerage, acted in a multiple representation scenario as the Broker for both the seller and the buyer in a transaction concerning a gas station development at 1-A Street, City A (the "Property").
3. On or about June 15, 2012, on behalf of the Brokerage, Gupta entered into an Exclusive Commercial Listing Agreement to list the Property for sale at \$3,500,000.00.
4. Gupta stated on the Listing Agreement that the seller was Seller A. However, Seller A was not the legal titleholder of the property at the time. Corporation A, an unrelated corporation was the titleholder. At no time did Seller A ever personally hold title to the property. Gupta did not verify ownership of the Property when the Listing Agreement was created.
5. On or about December 11, 2012, Gupta negotiated an Agreement of Purchase and Sale for the Property (the "APS"). The buyer was Buyer A in Trust (to be Incorporated). On the APS, Gupta stated the seller was Corporation B. However, this purported seller did not have title to the Property, never obtained title to the Property, and was in no way related to any party involved in the transaction.
6. On or about September 29, 2013, an amendment to the APS was signed changing the seller to Corporation C. This corporation's directors were Individual A and Seller A. This corporation had only taken title to the Property on January 18, 2013. There was never a provision in the APS making the transaction contingent upon Corporation C's purchase from Corporation B.
7. By failing to take any steps to verify the legal seller of the Property, by executing the Listing Agreement with a seller who never held legal title to sell the Property, by executing an APS with a seller that had no legal right to convey the Property and was an entirely unrelated corporation to any parties to the transaction, and by allowing the buyer to execute the APS which was not contingent upon the ultimate seller Corporation C's ability to convey title to the Property, Gupta contravened Code of Ethics Sections 4, 5, 21(1), 38 and 39.
8. The APS called for an original deposit to be paid to the Brokerage, and for three subsequent, sequential deposits to be paid to the seller's solicitor. The final deposit was

to be in the amount of \$475,000.00 paid to the seller's solicitor by certified cheque or draft.

9. However, contrary to the terms of the APS, and without obtaining an amendment to the APS, the final deposit was made payable to Corporation D, a corporation operated by Gupta, in the amount of \$225,000.00. Dealing with this significant deposit in a manner and amount other than that which was dictated by the terms of the agreement without an amendment to the APS contravenes Code of Ethics Sections 4, 5, 29 and 39.
  
10. Prior to closing, during the due diligence phase of the transaction, the buyer's lawyer sent an email to the seller's lawyer noting that an MTO permit obtained by the seller as part of the permitting process to build the gas station had expired and would need to be renewed. After being provided with this information, Gupta wrote to his client the buyer and the buyer's lawyer suggesting that the buyer should not make this an issue, because so far as the buyer had an occupancy certificate from the town, it means all compliance was in place, as MTO approval is always submitted to the town when applying for a building permit. Ultimately, the buyer was later confronted with issues surrounding the lack of MTO permitting for the gas station. Gupta's lack of diligence violated his fiduciary obligations to the buyer in contravention of Code of Ethics Sections 4, 5, 6(1), 21(1) and 39.

It is agreed that SANJIV GUPTA breached the following Sections of the Code of Ethics:

**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.

**Providing Opinions, etc.**

6.(1) A registrant shall demonstrate reasonable knowledge, skill, judgment and competence in providing opinions, advice or information to any person in respect of a trade in real estate.

**Material Facts**

21.(1) A broker or salesperson who has a client in respect of the acquisition or disposition of a particular interest in real estate shall take reasonable steps to determine the material facts relating to the acquisition or disposition and, at the earliest practicable opportunity, shall disclose the material facts to the client.

**Delivery of Deposits and Documents**

29. Except as otherwise provided by law, if a registrant is representing a client or providing services to a customer in connection with a trade in real estate, and the client or customer has entered into an agreement in connection with the trade that requires the registrant to deliver a deposit or documents, the registrant shall deliver the deposit or documents in accordance with the agreement.

**Error, Misrepresentation, Fraud, etc.**

38. A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in real estate.

**Unprofessional Conduct, etc.**

39. A registrant shall not, in the course of trading in real estate, engage in any act or omission that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming a registrant.

AGREED PENALTY

SANJIV GUPTA, the Respondent, be ordered to pay a penalty of \$13,500.00 on or before June 6, 2018.

By initials below, I, SANJIV GUPTA, 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, SANJIV GUPTA, 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, SANJIV GUPTA, 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 4, 5, 6(1), 21(1), 29, 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. SANJIV GUPTA is Ordered a Fine of \$13,500.00 payable to RECO on or before June 6, 2018.

*[Released: December 12, 2017]*