



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 -**

**PADAM KUMAR BIR also known as BOBBY BIR**

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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 Section 2(1) in respect of Sections 25(1) and 27(1) and Sections 3, 4, 5, 17, 24(1), 38 and 39 of the *REBBA 2002* Code of Ethics.

**ORDER:** Fine of \$6,000.00 payable to RECO on or before March 31, 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. Bir is and was, at all material times, registered as a broker under the Act and employed by Brokerage A.
2. On or about March 28, 2016, the owner (the "Seller") of the residential property located at 1- A Street in City A (the "Property"), entered into a listing agreement (the "Listing Agreement") with Bir on behalf of Brokerage A.

3. The Listing Agreement provided that the Seller would pay Brokerage A, as listing brokerage, a commission of 1% and a co-operating brokerage a commission of 2.5% of the sale price of the Property.
4. On or about March 28, 2016, Bir listed the Property for sale on the MLS®. The listing stated that offers would be presented to, reviewed and considered by the Sellers on April 3, 2016 at 7:00 p.m.
5. Bir failed to obtain written directions from the Seller to withhold presenting offers, contrary to sections 3, 4, 5 and 24(1) of the Code.
6. On April 3, 2016 at 4:00 p.m., Bir submitted an offer to purchase the Property (the "Bir Offer") on behalf of his buyer clients.
7. On April 3, 2016 at 6:00 p.m., Registrant B, a registrant under the Act, submitted an offer to purchase the Property for \$387,500.00 on behalf of her buyer clients.
8. Two other offers to purchase the Property were submitted by two other registrants on behalf of their clients.
9. Bir failed to inform Registrant B and the other registrants who submitted offers, in writing and as soon as practicable, that he had submitted an offer to purchase the Property on behalf of his own buyer clients, contrary to sections 3, 4, 5, 17 and 38 of the Code.
10. On April 3, 2016 at 8:30 p.m., Registrant B submitted an improved offer to purchase the Property for \$390,000.00 on behalf of her buyer clients.
11. On April 3, 2016 at 8:51 p.m., Bir sent a text message to Registrant B stating that he had provided all four offers to the Seller and would be reducing his commission by 1% if the Seller accepted the Bir Offer.
12. At no time did Bir reduce the commission reduction agreement to writing, submit to the Seller for signature, and/or provide the Seller with a copy of such agreement, contrary to section 2 in respect of section 27(1) of the Code and contrary to sections 3, 4 and 5 of the Code.
13. On April 3, 2016 at 8:55 p.m., the Seller accepted the Bir Offer for a purchase price of \$390,000.00.
14. Bir failed to notify Registrant B and the other registrants who had submitted offers to purchase the Property, as soon as practicable, of the commission reduction agreement, thereby preventing them from fairly competing with the Bir Offer and also denying the Seller the opportunity to obtain the maximum profit from the sale of the Property, contrary to section 2 in respect of section 25(1) of the Code and contrary to sections 3, 4, 5, 38 and 39 of the Code.

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

Brokers and Salespersons

2. (1) A broker or salesperson shall not do or omit to do anything that causes the brokerage that employs the broker or salesperson to contravene this Regulation.

*With respect to*

Agreements Relating to Commission

25. (1) If a brokerage has a seller as a client and an agreement between the brokerage and the seller contains terms that relate to a commission or other remuneration and that may affect whether an offer to buy is accepted, the brokerage shall disclose the existence of and the details of those terms to any person who makes a written offer to buy, at the earliest practicable opportunity and before any offer is accepted.

*And with respect to*

Written and Legible Agreements

27. (1) A registrant who represents a client in respect of a trade in real estate shall use the registrant's best efforts to ensure that,

(a) any agreement that deals with the conveyance of an interest in real estate is in writing; and

(b) any written agreement that deals with the conveyance of an interest in real estate is legible.

Fairness, Honesty, Etc.

3. A registrant shall treat every person the registrant deals with in the course of a trade in real estate fairly, honestly and with integrity.

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.

Nature of Relationship

17. If a registrant represents or provides services to more than one buyer or seller in respect of the same trade in real estate, the registrant shall, in writing, at the earliest practicable opportunity and before any offer is made, inform all buyers and sellers involved in that trade of the nature of the registrant's relationship to each buyer and seller.

Conveying Offers

24. (1) A registrant shall convey any written offer received by the registrant to the registrant's client at the earliest practicable opportunity.

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

PADAM KUMAR BIR also known as BOBBY BIR, the Respondent, be ordered to pay a penalty of \$6,000.00 on or before March 31, 2018.

By initials below, I, PADAM KUMAR BIR also known as BOBBY BIR, 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, PADAM KUMAR BIR also known as BOBBY BIR, 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, PADAM KUMAR BIR also known as BOBBY BIR, 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(1) and 27(1) and Sections 3, 4, 5, 17, 24(1), 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. PADAM KUMAR BIR also known as BOBBY BIR is Ordered a Fine of \$6,000.00 payable to RECO on or before March 31, 2018.

*[Released: January 17, 2018]*