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IN THE MATTER OF AN APPEALS HEARING HELD PURSUANT TO THE *REAL ESTATE AND BUSINESS BROKERS ACT, 2002*

BETWEEN:

REAL ESTATE COUNCIL OF ONTARIO

Appellant

- and -

JASKARN SAMRA

Respondent to the Appeal

COST DECISION AND REASONS FOR DECISION

APPEARANCES:

For the Registrant:	Jaskarn Samra
For the Real Estate Council of Ontario:	Shane Smith, counsel
Heard in Toronto:	September 3, 2025

FINDINGS:	No Cost Awarded
WRITTEN REASONS:	

REASONS FOR DECISIONS

1. This matter dealt with an appeal from the decision of the Discipline Committee (hereafter the "**Lower Panel**") dated January 25, 2024 (hereafter the "**Penalty Decision**") related to the penalty to be imposed upon the Respondent Jaskarn Samra (hereafter the "**Respondent**" or "**Samra**").

2. In its decision regarding discipline, the Lower Panel determined that Samra had contravened sections 4, 5, 6(1) and 39 of the Code of Ethics. The Lower Panel made its determination regarding the appropriate penalty to be imposed and ultimately determined that a fine of $10,000 and the requirement of completion of a requested course was appropriate.

3. The Registrar under the *Real Estate and Business Brokers Act, 2002* (hereafter the "**Registrar**") appealed from the decision of the Lower Panel. By a decision released on June 17, 2025, this panel of the Appeals Committee of the Real Estate Council of Ontario (hereafter "**this Panel**") dismissed the Registrar's appeal.

4. As indicated at paragraphs 62 and 63 of this Panel's Reasons for Decision dated June 17, 2025 (hereafter the "**Reasons**"), neither party had raised the issue of costs of the appeal or made any submissions on the issue and, accordingly, this Panel gave the parties an opportunity to make submissions regarding costs. In particular, this Panel brought to the parties' attention at paragraph 62 of the Reasons the wording of Rule 17.01 of the Discipline and Appeals Committees Rules of Practice (hereafter the "**Rules of Practice**") as follows:

> Rule 17.01 provides that this Panel may make an award of costs but only where "the conduct or course of conduct of a Party has been unreasonable, frivolous or vexatious or a Party has acted in bad faith."

5. Both the Respondent, and then counsel for the Registrar, provided written submissions to the Manager, Discipline & Appeal Hearings (hereafter the "**Manager**") within the time period provided by this Panel with respect to costs. Mr. Samra seeks $4,250.00 for costs of the appeal; while the Registrar submits that there should be no costs of the appeal in the circumstances.

6. This Panel met by videoconference on September 3, 2025 to consider the written submissions of the Parties as to costs in the presence of the Manager and independent legal counsel to this Panel.

Background to the Proceeding

7. The history of the hearing of this appeal is briefly set out at paragraphs 7 to 9 of the Reasons but bear a bit more fleshing out for the purposes of costs considerations. That history is as follows:

a. The hearing was originally scheduled to occur in December 2024 and, shortly before that date, a request was made by Mr. Samra for an adjournment. This was occasioned by the fact that his original counsel had become suspended by the Law Society of Ontario. This fact was known to Mr. Samra by November 8, 2024 in a message from his prior lawyer to the Manager, and this Panel inquired whether Mr. Samra required an adjournment of the original hearing date and afforded Mr. Samra one week to advise if he required an adjournment. Despite this request by this Panel, Mr. Samra either failed or refused to respond to the Panel's inquiry until almost two weeks after the requested response date and just over one week before the hearing of the appeal. As noted by this Panel in its decision on Mr. Samra's request for an appeal at paragraph 14 of its reasons on that decision dated November 28, 2024 (hereafter the "**November Direction**"), "… Mr. Samra's statement that he only discovered on Monday (being November 25) that [his counsel] was no longer able to represent him is subject to questioning – at best – and disbelief – at worst." Despite this Panel's reservations, the adjournment was granted and a timetable was set by which Mr. Samra was required to advise of any new counsel, set a new hearing date with the Manager and file his responding factum. The dates by which Mr. Samra was required to fix a new hearing date with the Manager and then to file his responding factum were made peremptory against him;

b. Despite the timetable imposed upon Mr. Samra by the November Direction, he proceeded to delay or ignore inquiries by the Manager with respect to a new hearing date for the appeal and he failed to serve and file his responding factum by the deadline set out in the November Direction. In light of the situation, this Panel issued a further Direction on January 29, 2025 (hereafter the "**January Direction**") giving Mr. Samra one final opportunity to agree to a hearing date and to either advise the Manager and counsel for the Registrar at least ten (10) days before the new hearing date that he did not intend to file a responding factum or, if he did intend to file a responding factum, to serve and file it by that date;

c. Notwithstanding the express direction of this Panel in the January Direction, Mr. Samra did not serve and file his responding factum until seven (7) days prior to the hearing of the appeal. The factum was only 17 paragraphs in length of which 10 had any substantive positions asserted – most of which were fairly bald statements of law with little to no other discussion or application to the facts of the case. Not surprisingly in light of this situation, counsel for the Registrar did not oppose the late filing of Mr. Samra's factum and was prepared to proceed with the hearing on May 22, 2025;

d. On the hearing of the appeal, Mr. Samra made virtually no submissions and took the position that he did not particularly care about the legal issues raised by the Registrar. Whatever this Panel might determine on the issue of whether the Lower Panel was correct in its discussion of the effect of Agreed Statements of Fact and Penalty for penalty considerations by discipline committees, his only concern was that the decision of the Lower Panel on the penalty in this specific case be upheld; and

e. The ultimate disposition by this Panel of the Registrar's appeal was not on the basis of any submissions made by Mr. Samra but was exclusively on its determination that it did not accept the submissions of the Registrar on the appeal to the extent that the Lower Panel's decision exhibit such "sufficiently serious shortcomings" as to warrant interference by this Panel.

Costs Submissions of the Parties

8. Mr. Samra has provided written submissions totalling 9 paragraphs. The case law cited by Mr. Samra, at paragraph 4 of his submissions is essentially a re-hashing of the submissions made in his factum on the appeal itself and do not address the issue of costs and adds nothing to assist this Panel in its determination on costs.

9. The other submissions of Mr. Samra may be summarized as follows:

a. This Panel may award costs after receiving submissions from the parties;

b. This Panel may award costs where the conduct of a party has been unreasonable, frivolous, vexatious or in bad faith (citing Rule 17.01);

c. The decision of the Registrar to appeal the Lower Court's decision "was unreasonable, amounting to legal rascality and constituting a vagrant [*sic*] waste of public resources";

d. The appeal was "devoid of legal merit and clearly designed to punish [Mr. Samra] for asserting his right to due process";

e. Mr. Samra was compelled to hire legal counsel to prepare materials and assist him to prepare for the hearing and he should not have borne those costs;

f. He requests costs “on a substantial indemnity basis”; and

g. The appeal is said to have been “absolutely unnecessary, brought in the face of clear and settled law, and amounted to regulatory overreach.”

Except for the cases cited in paragraph 4 of his submissions that, again, simply re-hash his submissions on the appeal hearing, no other case law or even reference to evidence before the Lower Panel is cited by Mr. Samra and the allegations summarized at paragraphs (c) through (g) above are little more than bald statements.

10. Mr. Samra also broke down his claim for costs of $4,250.00 as follows:

Item	Amount
Legal drafting and case preparation	$2,500.00
Lost professional time and preparation	$1,500.00
Printing and incidental costs	$250.00
Total	$4,250.00

Outside of simply providing these amounts, there is no justification or explanation given for the costs sought. For example, Mr. Samra requests $250.00 for “printing and incidental costs”. However, all documents were provided by all parties in electronic format and nothing was submitted in paper format that would incur printing costs.

11. The Registrar’s written submissions on costs were even more brief than those of Mr. Samra – being only 10 “paragraphs” (all of which were only one sentence in length). The crux of the Registrar’s written submissions can be summarized as follows:

a. Mr. Samra had advanced nothing to show that the appeal was devoid of legal merit or was unreasonable in any manner; and

b. The decision of the Appeal Committee in a different case (to be discussed below) goes against Mr. Samra's position on costs.

Analysis and Disposition

12. This Panel takes no issue with Mr. Samra's recitation of Rules 17.01 and 17.02(3) of the Rules of Practice at paragraphs 3 and 4 of his submissions. We shall save our consideration of Rule 17.01 for consideration with the submissions of the Registrar as the Registrar's submissions focussed solely on this point.

13. Mr. Samra claims that the Registrar's appeal was "devoid of legal merit" and was "brought in the face of clear and settled law". As stated in the Reasons, the first position of the Registrar was whether the Lower Panel mis-stated the Registrar's position on penalty. This was not a question of "legal merit" or "clear and settled law", so this argument of Mr. Samra would not apply to the first issue raised by the Registrar on its appeal. The second position of the Registrar on the appeal was that the Lower Panel incorrectly stated and applied the law regarding agreed statements of fact and penalty. That the issues were not clearly "devoid of legal merit" or involved "clear and settled law" was recognized by this Panel at several points in the Reasons. For example, at paragraphs 31 and 33, this Panel acknowledged that the Registrar's arguments were interesting and appealing at first blush but that this specific appeal did not require this Panel to make the determination sought by the Registrar. Moreover, at paragraphs 39 and 40 of the Reasons, quotes are taken from the Divisional Court's decision in *Fagbemigun* and the Superior Court's decision in *Holder* that indicate equivocal wording and led this Panel to conclude at paragraph 40:

> "It will be seen from these statements in *Fagbemigun* and *Holder* that it is not an automatic or foregone conclusion that the existence of an ASFP or a settlement <u>will</u> result in a reduction of a penalty. The emphasized wording quoted immediately above shows that there <u>can</u> be a reduction of penalty due to an ASFP but there equally could be a situation where the existence of an ASFP does not result in a reduction of a penalty. …"

This very clearly shows that, to this Panel, it was not "clear and settled law" or that the Registrar's appeal was "devoid of legal merit". We do not accept Mr. Samra's argument on this point.

14. Mr. Samra has requested costs "on a substantial indemnity basis". This argument might have had some merit to this Panel if this appeal had been subject to the *Rules of Civil Procedure*, but it is not. "Substantial indemnity costs" are a concept known under the *Rules of Civil Procedure* – defined in rule 1.03 and applied primarily in rule 57 of those rules. Costs, however, for this appeal are to be awarded pursuant to Rule 17.01 and are not governed by the concepts of "partial indemnity costs" or "substantial indemnity costs" that apply to civil proceedings in this Province. Whatever the basis of costs that could be awarded to Mr. Samra by this Panel, such an award of costs will not be made taking into account the concepts of costs as provided in the *Rules of Civil Procedure*. Instead, the amount of costs (and thus the "scale" on which they are to be awarded) are provided in Rule 17.02(1) and (2) of the Rules of Practice and there appears to be no need to import concepts from the *Rules of Civil Procedure*.

15. This leaves the real basis for an award of costs. As cited above, Rule 17.01 of the Rules of Practice provide that this Panel may award costs "if the conduct or course of conduct of a Party has been unreasonable, frivolous or vexatious or a Party has acted in bad faith." Mr. Samra has asserted that the Registrar, in pursuing the appeal, acted "unreasonably", in a manner amounting to "legal rascality"[1], or constituting a flagrant waste of public resources and amounted to "regulatory overreach".

16. Again, outside of these bald assertions as to the conduct of the Registrar (which this Panel accepts as amounting to claims by Mr. Samra that the Registrar has acted in a manner that was "unreasonable, frivolous or vexatious"), no further statements of the basis for such otherwise bald assertions have been provided by Mr. Samra – other than the prior statements examined above to the effect that the law was "clear and settled" and thus that the appeal was so "devoid of legal merit" that the determination of the appeal was a foregone conclusion – which position we have already declined to accept.

17. On the basis of Mr. Samra's own arguments for costs, this Panel is not willing to accept that the Registrar has acted in a manner that was "unreasonable, frivolous or vexatious" in bringing and pursuing this appeal or that the Registrar acted in bad faith.

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[1] Mr. Samra does not explain what he means by "legal rascality". Searches of Canadian case law by this Panel have not revealed any decision in which this phrase has been used. Google searches, however, have revealed sources which appear to suggest that this is a concept in certain African countries and is the equivalent of the arbitrary use of power, recklessness or even illegal actions. As such, it would appear to be a form of "unreasonable" or possibly even "vexatious" actions and adds little to the wording of Rule 17.01 of the Rules of Practice.

18. As mentioned above, the Registrar's submission was that it had not acted improperly so as to attract an award of costs pursuant to Rule 17.01 of the Rules of Practice and this Panel agrees with that submission. Beyond this, however, the Registrar cited one case to this Panel to which some brief mention should be made.

19. In *RECO* v. *Bao Sheng Zhang*, a decision of the Appeal Committee dated July 31, 2024, the Committee heard an appeal from the registrant against a finding of a breach of the Code of Ethics and the imposition of a penalty. The Appeal Committee noted, at page 3 of its decision on costs, that the lower panel had "provided extensive reasons for its conclusions and that the conclusions were reasonable" and further found that the Registrar, in that case, "was entirely successful on [the] appeal". On the following page, however, the Appeal Committee found that the registrant had not exhibited any "unreasonable, frivolous or vexatious conduct" and that the Registrar had not provided any example of such conduct. As a result, the Appeal Committee found that the requirement under Rule 17.01 of the Rules of Practice had not been met and no costs were awarded to the Registrar despite its complete success on the appeal.

20. It is this Panel's determination that the only difference between the situation in the *Zhang* decision and the present appeal is that the roles are reversed – in that, for this appeal, the Respondent was entirely successful and the Registrar lost its appeal. In both cases, however, the "winner" on the appeal did not show examples of unreasonable, frivolous or vexatious conduct or that the appellant had acted in bad faith and, therefore, it follows that costs should be denied.

21. For the foregoing reasons, this Panel has determined that there is no basis to award any costs to Mr. Samra pursuant to Rule 17.01 of the Rules of Practice and, accordingly, there shall be no order as to costs of the appeal.

22. Even if this Panel had determined that costs would be warranted, this Panel would not have been inclined to award costs to Mr. Samra in excess of $1.00 in light of his failures to abide by the directions given by this Panel in the proceeding.

[Decision Released: September 3, 2025]

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IN THE MATTER OF AN APPEALS HEARING HELD PURSUANT TO THE *REAL ESTATE AND BUSINESS BROKERS ACT, 2002*

BETWEEN:

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Appellant

- and -

JASKARN SAMRA

Respondent to the Appeal

APPEALS DECISION AND REASONS FOR DECISION

APPEARANCES:

For the Registrant:	Jaskarn Samra
For the Real Estate Council of Ontario:	Shane Smith, counsel
Heard in Toronto:	May 22, 2025

FINDINGS:	The Appeal is dismissed.
WRITTEN REASONS:	

REASONS FOR DECISION

23. This is an appeal from the decision of the Discipline Committee (hereafter the "**Lower Panel**") dated January 25, 2024 (hereafter the "**Penalty Decision**") related to the penalty to be imposed upon the Respondent Jaskarn Samra (hereafter the "**Respondent**" or "**Samra**").

24. In its decision regarding discipline, the Lower Panel determined that Samra had contravened sections 4, 5, 6(1) and 39 of the Code of Ethics. The Lower Panel then received written submissions from both counsel for the Registrar under the *Real Estate and Business Brokers Act, 2002* (hereafter the "**Registrar**") and for Samra and received these along with a brief of authorities and reply submissions from the Registrar.

25. The Registrar sought a fine of $20,000 and a requirement that Samra complete course number 2600 entitled "Ethics in Business Practice" within a specified period of time. The Lower Panel imposed a fine of $10,000 and the requirement of completion of the requested course.

26. Both the Registrar and Samra accepted that the governing principle in determining an appropriate penalty are the factors set out in *Registrar* v. *Suzette Thompson*, a decision of the Appeal's Committee of the Real Estate Council of Ontario dated May 31, 2012. Both parties made submissions related to the various factors set out in the *Thompson* decision and these submissions were considered at length by the Lower Panel in the Penalty Decision.

27. The Registrar has appealed the Penalty Decision to this panel of the Appeals Committee of the Real Estate Council of Ontario (hereafter "**this Panel**") on the basis that the Lower Panel erred in its determination and application of the final factor of the *Thompson* factors – namely, the range of sanctions in similar cases.

28. The appeal was heard before this Panel on May 22, 2025 by videoconference and those present included the members of this Panel, Douglas Cunningham (as independent legal counsel to this Panel), Raquel Smith (Manager, Discipline and Appeals Hearings), Shane Smith (counsel for the Registrar) and Mr. Samra (appearing in person).

Preliminary Issues

29. The hearing was originally scheduled to occur in December 2024 and, shortly before that date, a request was made by Mr. Samra for an adjournment and the request was granted by this Panel. As part of its Direction given at that time, this Panel required Mr. Samra to serve and file any responding factum by a specified date and made this date peremptory on Mr. Samra. Subsequent events required a further Direction to be made by this Panel which resulted in the issue of Mr. Samra's late filing of his responding factum being addressed at the outset of the hearing as well as the possibility that the late service and filing might require an adjournment of the hearing.

30. On the addressing of the factum issue, Mr. Smith, counsel for the Registrar, advised that he did not oppose the late service and filing of Mr. Samra's factum and that no adjournment was required by him to provide sufficient time for him to address any issues raised in Mr. Samra's factum. As a result, this Panel allowed the late service and filing of Mr. Samra's factum and the appeal was argued before this Panel by Mr. Smith and Mr. Samra.

31. The parties agreed that, for the purposes of the present appeal, the parties' facta, the Notice of Appeal, the Penalty Decision and the parties' penalty submissions to the Lower Panel for the purposes of the Penalty Decision were the sufficient and appropriate materials for the determination of the appeal. In the event that certain findings were made by this Panel, it was also submitted that reference should be made to the Lower Panel's original decision that determined that Mr. Samra had breached certain sections of the *Code of Ethics*.

Decision of the Lower Panel

32. The Penalty Decision totals 27 pages in length and 129 paragraphs. As the only issue on the present appeal is the consideration of the final factor in the *Thompson* list of factors, these Reasons will only focus on the parties' written submissions and the Lower Panel's analysis of this factor.

33. The Registrar put forward to the Lower Panel three prior decisions that established a range of between $7,500 and $11,000 for penalties and for which two of them required that the registrant also complete a compulsory educational program. The Registrar then submitted that the Lower Panel should impose a higher penalty of $20,000 on the basis that the three prior cases were all determined on the basis of Agreed Statements of Fact and Penalty (hereafter "**ASFPs**") and that the Panel should take into consideration the fact that such cases tend to be lower due to the mitigating factor of an earlier determination of the complaint. In response, Samra's counsel simply stated that there were, unspecified, inconsistencies in the application of penalties in the prior case law and that the proposed fine of $20,000, somehow, exceeded the range of sanctions typically imposed in similar cases (with no particulars of this allegation being provided).

34. The Lower Panel's analysis of the final *Thompson* factor in the Penalty Decision is reproduced below in full for convenience:

> **ix. <u>Range of Sanctions in Similar Cases</u>**
>
> 109. The Panel agrees that previous cases are helpful guides to determining appropriate penalty, hence, a comparison of similar cases is an important factor in the consideration of a disciplinary penalty. The Panel therefore pays attention to the case of Duval v. College of Nurses Ontario, 2007 in its determination.
>
> 110. Counsel for the Registrar submitted three (3) cases for consideration by the Panel.

The penalties in the cases ranged from $7,500.00 to $11,000.00, with two (2) requiring the respondents to complete educational courses, including:

i. *Olayinka Oduwole*, June 28, 2019 – A fine of $11,000.00 plus an education course.

ii. *Biliana Dib*, September 2, 2020 – A fine $9,000.00 plus an education course.

iii. *Del Burton*, May 3, 2022 - A fine of $7,500.00, only.

111. All three (3) cases were settled by "agreed upon resolution", where the respondents took responsibility for their actions and did not proceed to a hearing.

112. Counsel for the Registrar uses the *Oduwole* case as the benchmark for suggesting the Penalty in this matter and points out that the Penalty in this matter should be higher than *Oduwole* case because:

i. the instant breaches are more significant;

ii. the harm caused by the Respondent in this matter is significantly greater;

iii. the Oduwole decision was issued in 2019, and fines have increased since that time; and

iv. the *Oduwole* matter was resolved by way of an Agreed Statements of Facts and Penalty ("ASFP"), as opposed to going through a hearing like the instant matter and as such penalties which result from an agreed upon resolution are less than penalties for similar matters that go through a contested hearing.

113. Counsel for the Registrar references the *RECO v. Brian Gogek, Discipline Decision*, January 26, 2018, at para 26 (emphasis added) to demonstrate that a settlement-based resolution can make a difference in the determination of the appropriate penalty.

114. The *Gogek, Discipline Decision* proceeded to a hearing and in the *Gogek* Penalty Decision released on January 26, 2018, a panel of the Discipline

Committee ordered a penalty of a fine of $18,000.00 and the completion of the REIC Ethics and Business Practice course.

115. The Panel takes issue with the submission by Counsel for the Registrar that penalties imposed by way of a settlement, usually by way of an ASFP, should generally result in a reduced penalty for a registrant. Settlements by way of an ASFP reflect that the registrant has accepted some responsibility for their actions and in addition, saved the time and costs that would otherwise be expended on a contested hearing.

116. Counsel for the Registrar further suggests that “The penalty in this case should be greater than in the cases resolved by way of an ASFP and fall more closely in line with cases where there was a contested hearing and a decision made by the Panel.”

117. The Panel appreciates the options available to registrants for resolving discipline matters, either by way of a resolution by ASFP or proceeding to a hearing and sees the resolution options a matter of choice for registrants, not a norm.

118. The Panel is mindful of the legal principles of Natural Justice and Due Process:

a) Natural justice requires that a person receive a fair and unbiased hearing before a decision is made that will negatively affect them; and

b) Due process is related to the presumption of innocence. It involves a thorough examination of the facts of each case and recognition of the importance of protecting the legal rights of individuals against whom allegations are made.

119. The Panel understand the rationale and the thinking behind the of use of resources, the perceived savings and the perceived acceptance of responsibility, when a matter does not proceed to a hearing. Nevertheless, since the resolution options are a matter of choice for registrants and not a norm, plus bearing in mind the importance of the legal principles of natural justice and due process, the Respondent asserting his right to have any alleged contraventions of the Code of Ethics determined by the Panel by way of a hearing, should not and cannot be used as a means to determine a higher penalty. Determining and imposing the quantum of penalty by way of a settlement, usually by way of an ASFP, becomes subjective rather than objective.

120. The Panel considers that to consider the Registrant's choice of having a hearing to resolve the allegations as a factor to determining a higher penalty is not in the interests of justice or procedural fairness, or for the benefit of the profession, and could result in damage to the Registrants' reputation and could lead to a decrease in registrant and public confidence in the regulatory machinery and the real estate profession.

Grounds of Appeal

35. The Registrar has appealed the Lower Panel's decision on what Mr. Smith described as a "narrow issue" – namely, how the Lower Panel treated the final factor set out in the *Thompson* decision. More specifically, as stated in paragraph 17 of the Registrar's factum, the questions asked of this Panel were:

a. What was the appropriate standard of review;

b. Whether the Lower Panel erred by mis-stating the Registrar's position on the use to be made of past decisions that were based upon ASFPs;

c. Whether the Lower Panel erred by incorrectly stating and applying the law regarding the assessment of penalty amounts in decisions based on ASFPs; and

d. If this Panel found that the Lower Panel had erred, what was the appropriate remedial order.

36. For the reasons that follow, this Panel dismisses the appeal.

Standard of Review

37. The Registrar has submitted that the standard of review on the appeal is one of correctness or, in the alternative, that it is one of reasonableness. Whichever standard is required, the Registrar submits that the Lower Panel was either incorrect in its appreciation of the law or that its decision was unreasonable in the circumstances of the case.

38. Questions of law that are general in nature and are of central importance to the legal system as a whole (in this case, to the disciplinary system for RECO as a whole) are to be determined on a correctness standard. Otherwise, the presumption is that decisions of lower panels are to be reviewed for reasonableness. In considering the reasonableness of a lower decision, this Panel is required to determine whether the Penalty Decision suffered from "sufficiently serious shortcomings .. such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency." This panel must also be "satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable." (See *Canada (Minister of Citizenship & Immigration)* v. *Vavilov*, 2019 SCC 65 at paragraphs 53 and 100.)

39. This Panel has accepted that the issue of the interpretation of the final listed factor in *Thompson* is a question of law that is general in nature and, accordingly, that the appropriate standard of review is that of correctness. However, to the extent that the Registrar has appealed the application of the facts to the law, this is to be reviewed on the basis of reasonableness.

<u>Whether the Lower Panel Mis-Stated the Registrar's Position on Penalty</u>

40. At paragraphs 35 and 36 of the Registrar's factum it sets out its position on this issue as follows:

> 35. It is clear on review of RECO's submissions that the Appellant was not suggesting that exercising the right to a hearing was an aggravating factor that warranted a larger penalty.
>
> 36. Rather, the Respondent's [*sic*] position was, and remains that in comparing penalties from factually similar cases, discipline panels need to be aware of and acknowledge that cases which resolve by way of an ASFP (i.e. agreement) and without the need for a hearing result in a lower or lesser penalty because agreeing to a resolution is a mitigating factor."

In its factum, the Registrar stated that the Lower Panel mischaracterized this submission as amounting to being an "aggravating factor that warranted a larger penalty". As Mr. Smith put it in oral argument, the Lower Panel is said to have turned the concept on its head.

41. The question is whether the Lower Panel mis-stated the Registrar's position. At paragraph 116, the Lower Panel put the Registrar's position as being that the "penalty in this case should be greater than in the cases resolved by way of an ASFP and fall more closely in line with cases where there was a contested hearing and a decision made by the Panel." At first blush, when comparing this statement to that quoted from the Registrar's factum immediately above, it appears that there

is either a disconnect or a misunderstanding. However, the statement from the Registrar's factum does not correspond with what it submitted to the Lower Panel.

42. At paragraph 54 of the Registrar's penalty submissions, it made the following statement:

> 54. RECO submits that the penalty should be higher in Samra's case than in *Oduwole* for four reasons:
>
> …
>
> iv) because the Oduwole matter was resolved by way of an Agreed Statement of Facts and Penalty as opposed to going through a hearing like Samra. The Discipline Committee has recognized that penalties which result from an agreed upon resolution are less than penalties for similar matters that go through a contested hearing:
>
> > *No doubt the $18,000 penalty in that case was based on the fact that the matter was disposed of by the Discipline Committee on an Agreed Statement of Facts and Penalty, with a hearing having been waived pursuant to Rule 4.02 of the Rules of Practice.* ***The same findings following a hearing would likely have resulted in a penalty at the very upper limit of the jurisdictional****.*
>
> (Emphasis in the original submissions of the Registrar).

43. The case quoted by the Registrar in the passage immediately above was *RECO* v. *Brian Gogek*, Discipline Decision, January 26, 2018, at paragraph 26. This decision will be discussed further below.

44. Putting aside for the moment the issue of whether the Lower Panel's statement of the Registrar's position is legally correct, the submissions made by the Registrar

at paragraph 54 of its written penalty submissions are consistent with the Lower Panel's statement of that position.

45. The Registrar has submitted that there is an obligation of the Lower Panel to properly understand and appreciate the arguments or submissions being made by a party to the discipline panel and that, where there is such a misunderstanding or failure to appreciate the arguments or submissions, this amounts to a breach of natural justice as it, effectively, deprives the party of the right to be heard.

46. The Registrar has cited the Court of Appeal's decision in *Brooks* v. *Ontario Racing Commission*, 2017 ONCA 833 at paragraph 5 for the principle that the standard of review for a breach of procedural fairness or breach of natural justice is the standard of "correctness" and this Panel accepts that that is the appropriate standard.

47. On questioning by this Panel, Mr. Smith forthrightly acknowledged that he had no case law to support his submission that there is a "right to be understood" (this Panel's phrase) by the trier of fact as a freestanding example of a principle of natural justice. However, as a "matter of first principles", Mr. Smith urged this Panel to consider making such a finding.

48. As interesting and appealing an argument as it may be, the fundamental difficulty for the Registrar is that, even if this Panel were to make such a holding that there is a "right to be understood" as a principal of natural justice, as indicated above, there appears to have been no failure on the part of the Lower Panel to understand the Registrar's arguments.

49. In essence, the Registrar at paragraph 36 of its factum is saying that what it *meant* to say in paragraph 54 of its penalty submissions is that the Lower Panel should have been aware of the possibility of mitigating factors when considering the comparable cases for the final *Thompson* factor. However, that is not what was

actually stated at paragraph 54 of the penalty submissions as quoted above. Accordingly, even if there was a “right to be understood”, it is this Panel’s finding that the Lower Panel did understand the submission made to it and, conversely, did not mis-state the Registrar’s position at paragraph 116 of the Penalty Decision.

50. Accordingly, this aspect of the appeal is dismissed.

Whether the Lower Panel Incorrectly Stated and Applied the Law re ASFPs

51. The second ground for appeal put forward by the Registrar was that the Lower Panel failed to properly state and apply the law regarding the assessment of penalty amounts in decisions based on ASFPs. Before doing so, we will quickly address one subsidiary position advanced by Mr. Smith in his oral argument.

52. It was submitted by the Registrar that the final *Thompson* factor, consideration of the range of penalties imposed in prior, similar cases, was, if not the main factor for consideration by the discipline committees, then it was one of the key factors that the Lower Panel and other discipline committees should consider. In support of this position, the Registrar has cited the Divisional Court’s decision in *Fagbemigun* v*. College of Physicians and Surgeons of Ontario*, 2023 ONSC 2642. At paragraph 31 of the decision, the court wrote:

> [31] A penalty imposed by a regulatory tribunal will be overturned only if it is shown that the tribunal made an error in principle or that the penalty was “clearly unfit”. To be clearly unfit, the penalty must be disproportionate or fall outside the range of penalties imposed in other cases: *Mitelman v. College of Veterinarians of Ontario*, 2020 ONSC3039 (Div. Ct.), at para. 18..

For the Registrar, it follows that if a penalty can be overturned simply on the basis that a penalty was “clearly unfit” and, that is, that it is disproportionate or falls outside of the range of penalties imposed in other cases (i.e. the ninth of the

Thompson factors), then this shows that there is priority to this factor as compared to the other *Thompson* factors.

53. Once again, Mr. Smith's argument in this regard is interesting and appealing at first blush. The Appeals Committee in the *Thompson* decision does not state that any one or more factors should be afforded a higher "rank", "weight" or similar concept as compared to the other factors. At pages 12-13 of the decision, the only statement made by the Appeals Committee in its acceptance of the nine factors was that the list was "non-exhaustive".

54. At pages 4-5 of the *Thompson* decision, the Appeals Committee indicates that the list of factors that it ultimately accepts and adopts (in reduced number) came primarily from the 1996 decision of Justice Green of the Newfoundland Supreme Court (Trial Division) in *Jaswal* v. *Newfoundland Medical Board* as well as the 2008 and 2010 decisions of the disciplinary panels of the Law Society of Upper Canada in *Law Society of Upper Canada* v. *Mucha* and *Law Society of Upper Canada* v. *Senjule*. In the first full paragraph on Page 5 of *Thompson*, the Appeals Committee quoted paragraph 4 of the *Senjule* decision as follows:

> The primary objective in disciplinary hearings when it comes to penalty is to maintain the public confidence in the legal profession.

Arguably, this may reflect an indication from the Appeals Committee in *Thompson* that if preference is to be given to any of the factors, it would not be the ninth factor regarding the range of prior penalties but, instead, the seventh factor (the need to maintain the public's confidence in the integrity of the professional).

55. Again, while an interesting and appealing issue, it is one that this Panel need not determine or otherwise make further comment upon for the purposes of determining the present appeal. Accordingly, this Panel declines the opportunity to delve into whether any one or more of the *Thompson* factors should be afforded

more weight or rank over any other factors and, if so, which should be the "prioritized" factors. We will leave this for a future panel of the Appeals Committee to consider more fully whenever the need arises.

56. Turning back, then, to the second issue of the appeal, it was the Registrar's submission that the Lower Panel failed to properly state and apply the law regarding the assessment of penalty amounts in decisions based on ASFPs.

57. In oral argument, Mr. Smith for the Registrar stated that the law is that whether a registrant goes through to the end of a hearing, as opposed to settling the complaint through an ASFP, should be a neutral factor. In one respect, this Panel accepts that statement from the Registrar – namely, that the issue of whether a registrant has opposed the complaint all the way through to the end of a hearing (and an ultimate finding of a breach of the *Code of Ethics*) is not to be seen by the discipline committee when it determines the appropriate penalty as an aggravating factor to be considered in that determination.

58. With respect to this issue, the Lower Panel was also in agreement when it wrote at paragraph 119 of the Penalty Decision that "the Respondent asserting his right to have any alleged contraventions of the Code of Ethics determined by the Panel by way of a hearing, should not and cannot be used as a means to determine a higher penalty." The Registrar has submitted to this Panel that the combination of this passage just quoted in paragraph 119 of the Penalty Decision with the brief discussion of certain principles of natural justice should be seen as a statement by the Lower Panel that it is a breach of natural justice to take into consideration the possibility that a penalty decision based upon an ASFP included mitigating factors. We do not read the Lower Panel's decision in that way. As noted, in paragraph 119 of the Penalty Decision, the Lower Panel is making this statement in the context of whether it is proper to find that the taking of a complaint through a hearing (and, conversely, the lack of doing so by settling through an ASFP) should constitute an aggravating factor for determining the appropriate penalty. If this

were to occur, then the Lower Panel, this Panel and the Registrar all agree that this would constitute an improper determination and would likely constitute a breach of the principles of natural justice. This, however, is not the end of the analysis.

59. To this Panel, the statement that taking the complaint through to the end of a hearing should be a neutral factor is not actually what is being presented by the Registrar. It is inconsistent to say, on the one hand, that this issue should be a "neutral" factor while, on the other hand, saying that discipline panels should be aware of the fact that prior decisions are the result of an ASFP and that the penalties given in those cases may have resulted in a lower penalty than might otherwise be the case if the complaint went through to the end of a full disciplinary hearing. If, as the Registrar submits, the discipline panels should be aware of this fact, to say that it is a "neutral" fact raises the risk of further confusion down the road. More importantly, this also risks the possibility that future discipline panels will decline to give effect to submissions that prior decisions based upon ASFPs <u>can</u> be considered (albeit with at least some caution) as reflecting mitigating factors such as early settlements for the purposes of the ninth *Thompson* factor.

60. As will have been just read, this Panel has emphasized the word "can" with respect to the consideration of decisions based upon ASFPs. On questioning by this Panel, Mr. Smith again forthrightly acknowledged that it would not be proper to set out any absolute rule by which, for example, it <u>must</u> be held by all discipline committees that penalties in cases involving ASFPs should be viewed as if the penalty involved some sort of "discounted" or "reduced" penalty – with the implication then being that <u>all</u> cases going through to the completion of a hearing should use those prior cases as some sort of "base" or "floor" for penalty considerations. Clearly, the Lower Panel in the Penalty Decision was concerned about this type of situation when it wrote at paragraph 117 that there should not be a "norm" or at paragraph 120 when it stated that "to consider the Registrant's choice of having a hearing to resolve the allegations <u>as a factor to determining a</u>

higher penalty is not in the interests of justice or procedural fairness…" (our emphasis).

61. The Divisional Court's decision in *Fagbemigun, supra.*, was the appeal from a decision of the Ontario Physicians and Surgeons Discipline Tribunal. The Registrar also cited from the tribunal's decision and it should be noted that that tribunal, at paragraph 16 of its decision (2022 ONPSDT 22), in discussing a case involving an ASFP stated that this "may tilt the balance towards a less severe penalty" (our emphasis). Similarly, the Registrar quoted at length in its factum a passage from the decision of Justice Hill in *R.* v. *Holder* (1998 CanLII 14962 (Ont.S.C.). From that passage, we see the following statements:

(a) "A plea of guilt is generally acknowledged to be a mitigating factor in sentencing …";

(b) "The effect of a guilty plea in setting the appropriate sentence will vary with the circumstances of each case …";

(c) "… Indeed, a plea of guilt, entered during a trial itself, may be deserving of mitigation of sentence …"

(d) "… while a guilty plea mitigates sentence, the converse is not true—a not guilty plea cannot aggravate sentence—the leniency otherwise available on account of the form of the plea is simply absent …"

The emphasis in each of these statements being that of this Panel.

62. It will be seen from these statements from *Fagbemigun* and *Holder* that it is not an automatic or foregone conclusion that the existence of an ASFP or a settlement will result in a reduction of a penalty. The emphasized wording quoted immediately above shows that there can be a reduction of penalty due to an ASFP but there

equally could be a situation where the existence of an ASFP does not result in a reduction of a penalty. For example, a penalty that has been agreed upon between the Registrar and a Registrant may be the same penalty that the Registrar would have sought if the complaint had proceeded through a full hearing.

63. In this Panel's view, the Lower Panel has not stated that it should not consider the potential effect of an ASFP on the penalty imposed in a prior decision. Instead, the Lower Panel was taking issue with the concept that the existence of an ASFP or settlement will result in a reduction of a penalty. Thus, at paragraph 115 of the Penalty Decision, the Lower Panel wrote that it took issue with the submission that "penalties imposed by way of a settlement … should generally result in a reduced penalty for the registrant." To the same effect are the Lower Panel's statements at paragraphs 119 and 120 of the Penalty Decision. However, it does not follow that the Lower Panel held that prior cases involving ASFP's should be considered without recognition that the penalties imposed in those cases could have been reduced due to the mitigating factor of the existence of the settlement. The Lower Panel has not made such a statement, and this Panel does not take them as setting that out as a proposition.

64. In terms of the statement of the law. The Registrar has submitted that the fact that Mr. Samra (or any registrant) took the complaint through to the end of a hearing is not to be considered as an aggravating factor that could increase in some form the penalty imposed by the Lower Panel (or any other panel). This Panel agrees with that statement of the law and our reading of the Penalty Decision is that it is also consistent with this statement of the law.

65. Similarly, this Panel is also in agreement with the acknowledgment by the Registrar that one cannot lay down an absolute rule by which all prior cases in which an ASFP existed should be treated as if the penalties imposed in those cases were less than they would have been if the case had gone through a full discipline hearing. Our reading of the Penalty Decision is that the Lower Panel was also of

the same opinion. That being the case, it is this Panel's view that the Lower Panel did not err in its statement of the law as it relates to ASFPs.

66. The result of this analysis is that in applicable cases:

a. it remains open to the Registrar to submit to discipline panels that consideration can (and even should) be given to prior decisions of the fact that such decisions involved an ASFP and could have resulted in a reduced, or mitigated, penalty as part of the considerations for the ninth *Thompson* factor; and

b. it equally remains open to the discipline panel to consider to what extent (if this is capable of determination from a specific case) the penalty imposed in that case was reduced or mitigated due to the settlement or ASFP. In a perfect world, future decisions of the Chair of the Discipline Committee or of panels of the Discipline Committee would set out the extent of any mitigation or reduction and this Panel would hope to see such considerations enunciated in future decisions.

This Panel does not read the Penalty Decision as derogating from these principles and, accordingly, there does not appear to be any error in the Lower Panel's statement of the law as it relates to the consideration of cases involving ASFPs for the ninth *Thompson* factor.

67. It remains, then, to be determined whether the Lower Panel failed to properly apply the law as it related to the use of the prior cases for its determination of the ninth *Thompson* factor. Again, this Panel is of the view that there was no improper application of the law.

68. Again, while the determination of a legal question – in this appeal, the statement of the law by the Lower Panel – is a matter to be reviewed on the correctness

standard, the application of the facts to the law is a matter for which the reasonableness standard applies. Therefore, the question to be asked by this Panel is whether the application of the ninth *Thompson* factor by the Lower Panel was unreasonable and ought, therefore, to be overturned or varied in some manner.

69. As mentioned above, the ninth *Thompson* factor required the Lower Panel to consider the range of penalties provided in prior decisions. The "pool" of prior decisions was quite shallow. Mr. Samra provided no cases and simply asserted that the cases did not justify the penalty sought by the Registrar, thereby providing no assistance to the Lower Panel in its considerations.

70. The Registrar provided three decisions – one giving a penalty of a $7,500 fine; another with a fine of $9,000 and the requirement to complete an educational course; and another with a fine of $11,000 and the requirement to complete an educational course. The Registrar requested that the Lower Panel impose a penalty comprised of a fine of $20,000 and the requirement to complete an educational course. The Lower Panel imposed a fine of $10,000 and the requirement to complete an educational course.

71. The Registrar does not take issue with the Lower Panel's decision to impose the requirement to complete the educational course. This was requested by the Registrar and is consistent with two of the three cases provided by the Registrar to the Panel. The issue, then, is whether the Lower Panel should have imposed a higher fine.

72. It should be noted that, just as Mr. Samra made a somewhat "bald" statement that the, unspecified, case law did not support the imposition of the $20,000 fine requested by the Registrar, the Registrar gave almost no justification for its requested $20,000 fine. With respect to the quantum itself, the Registrar gave no

prior case law to show, for example, that in a similar case a $20,000 fine was imposed.

73. The cases put forward by the Registrar gave a range of between $7,500 and $11,000 for the fines. In all three cases, the basic facts as agreed between the Registrar and the applicable registrant are set forth, the registrant signs an acknowledgment of waiving the right to a hearing and agreeing to the proposed penalty, and the Chair of the Discipline Committee rendered a one or two sentence order imposing the fine or the fine and requirement to complete the educational course. Other than establishing the range of fine and some basic factual background, the three decisions referenced by the Registrar provided little assistance to the Lower Panel.

74. The Registrar also stated that the more applicable decision of the three provided by it was that with the highest penalty – the *Oduwole* decision. The Registrar further submitted that a higher penalty should be imposed by the Lower Panel because the actions of Mr. Samra were more significant than those in *Oduwole* specifically in four main ways.

75. The first difference, it was submitted by the Registrar, was that Samra was aware that his clients had financial issues and did nothing to inquire into the matter further. The Lower Panel had found at paragraphs 73 and 74 of the Penalty Decision that Mr. Samra's breaches of the Code of Ethics were the result of negligence primarily resulting from inaction on his part and were "moderate" in gravity. In contrast, the agreed facts in *Oduwole* evidenced numerous false statements and actions on the part of the registrant in that case from setting the complainant up with non-responsive mortgage brokers, to advising that funding was available when it was not available, to attempting to have the client sign a release and walk away from the deal. It is not obvious to this Panel that the first differentiating factor relied upon by the Registrar to find that the penalty should equal, or exceed, the penalty imposed in *Oduwole*.

76. The second difference submitted by the Registrar was that the harm caused by Mr. Samra was greater than the harm suffered in *Oduwole*. In *Oduwole*, the complainant lost her $10,000 deposit as well as paying a fee of $2,500 to a mortgage broker who apparently did little to nothing for that fee. Conversely, as recognized by the Lower Panel at paragraph 82 of the Penalty Decision, the complainants in the present case "lost everything, including their deposit monies and a place to live." Accordingly, the second difference was a fact within the appreciation and consideration of the Lower Panel in determining the appropriate penalty.

77. The third difference was stated by the Registrar to be that "the *Oduwole* decision was issued in 2019, and fines have increased since that time." At this point it should be recalled that the Registrar's submissions were made in November 2023 – being only 4 years after the *Oduwole* decision (as opposed to decades later, for example). This Panel also notes that nothing beyond the statement that "fines have increased since that time" was provided to the Lower Panel. As noted above, if fines had been reaching $20,000 in similar cases, the Registrar did not provide such cases to the Lower Panel.

78. The Registrar referred to the decision in *RECO* v. *Gogek*, Discipline Decision, January 26, 2018 that did show that a penalty of $18,000 had been imposed. However, a review of that case showed that the registrant: (i) listed a property for sale without the knowledge or consent of the owners; (ii) he did so using incomplete documentation for which he did not attempt to verify the information and simply relied upon a purported "agent" for the owners; (iii) he falsely completed FINTRAC forms; (iv) he did not report the listings he made with his brokerage. The panel in *Gogek* found that his actions were "egregiously below the standard of care and conduct expected of a registrant", were "grave" and could not be "characterized as anything but unprofessional". The panel also noted that this was not the registrant's first disciplinary breach and that he had been ordered

previously to pay a fine of $8,000 and complete an educational course. Thus, the only case provided by the Registrar to the Lower Panel other than the three similar cases involved a qualitatively different factual matrix with deliberate and egregious breaches, as compared to the Lower Panel's determination that Mr. Samra's breaches were caused by negligence and were moderate in gravity.

79. The fourth and final difference between the present case and the *Oduwole* case was the submission that the fact that *Oduwole* case was determined on the basis of an ASFP should give rise to a higher penalty in this case since Mr. Samra went through with his hearing. This issue has been addressed already above.

80. As mentioned above, the standard of review is reasonableness and the Supreme Court in *Vavilov, supra*, stated the following regarding this standard at paragraph 100 of that decision:

> [100] The burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. It would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep. Instead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable.

81. In the present appeal, it is not this Panel's view that the Penalty Decision exhibits "sufficiently serious shortcomings" based upon the submissions made to the Lower Panel. Ultimately, the submissions made for the ninth *Thompson* factor established a range from $7,500 to $11,000. The Lower Panel's penalty of

$10,000 fell at the higher end of that range. The facts in both *Oduwole* and *Gogek* – being the only cases with penalties higher than that imposed by the Lower Panel against Mr. Samra – involved factual circumstances with more serious breaches of the *Code of Ethics*. The higher "loss" suffered by Mr. Samra's clients, as opposed to those in *Oduwole*, was a factor within the purview of the Lower Panel in making its decision. Accordingly, it is this Panel's decision that the Lower Panel's application of the facts and the submissions of the parties in its determination of the ninth *Thompson* factor was reasonable or, conversely, was not unreasonable so as to warrant interference with this Panel.

82. For all of the foregoing reasons, it is this Panel's determination that the Lower Panel did not err in the Penalty Decision and, accordingly, the appeal is dismissed.

83. In light of the Panel's findings, there could be two further issues to be addressed. The first relates to the penalty itself as imposed by the Lower Panel. The Lower Panel's decision was released on June 19, 2024, and required, at paragraphs 121 and 129, that Mr. Samra was required to (i) pay the fine of $10,000.00 plus costs of $500.00 and (ii) complete the educational course, within 180 days of the date of the decision – which would have required compliance by December 2024. It is unclear to the Panel whether the payments have been made or if the course has been completed, or if there is a request for additional time for these to occur in light of the appeal.

84. The second issue is the costs of the appeal. Neither side requested costs or raised the issue of costs of the appeal during the hearing of the appeal. Rule 17 of the Discipline and Appeals Committees Rules of Practice governs costs. Rule 17.02(3) provides that this Panel can award costs after providing the parties with an opportunity to make submissions as to whether costs should be awarded and the amount of such costs. Rule 17.01 provides that this Panel may make an award of costs but only where "the conduct or course of conduct of a Party has been unreasonable, frivolous or vexatious or a Party has acted in bad faith."

85. If either a request is to be made for additional time for compliance with the Lower Panel's penalty decision or if costs are to be requested by either party, the Panel requires that such request(s) and the submissions for such request(s) be made to the Manager, Discipline & Appeal Hearings by no later than 4:00 p.m. on Monday June 30, 2025. If no such requests are made, then the parties will be deemed to have waived their rights to request such items. In the event that either party requests either costs or additional time for compliance, the other party shall submit any responding submissions to such request(s) to the Manager, Discipline & Appeal Hearings by no later than 4:00 p.m. Tuesday July 15,2025 and the Panel shall make its determination on such request(s) shortly thereafter.

[Decision Released: June 17, 2025]

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-

JASKARN SAMRA (a.k.a JAZZ SAMRA)

DISCIPLINE DECISION AND REASONS FOR DECISION

The Panel met by videoconference on January 25, 2024, to discuss the written submissions with respect to Penalty and Costs. The Panel decided as follows:

ORDER:	Pay a fine of $10,000.00 to RECO within 180 days of the release of the Penalty Decision of the Panel. Successfully complete the Real Estate Institute of Canada ("REIC") course number 2600: "Ethics in Business Practice" and notify the Registrar of such within 180 days of the release of the Penalty Decision of the Panel.

COSTS AND EXPENSES: Pay a Cost of $500.00 to RECO, within 180 days of the release of the Penalty Decision of the Panel.

WRITTEN REASONS:

REASONS FOR DECISION ON PENALTY & COST

INTRODUCTION

1. The Discipline Panel convened, on January 25, 2024, to deliberate on written submissions from the Prosecution (the “Registrar” /” RECO”) and the Respondent, Jaskarn (Jazz) Samra (the “Respondent” and/or “Samra”) on the issue of Penalty and Costs of the Parties.

2. Submissions for the Registrar was done by Shane Smith, Senior Legal Counsel for Real Estate Council of Ontario (“Counsel for the Registrar”) and submissions for the Respondent was done by Philip U. Okpala, counsel for Samra; (“Counsel for the Respondent”).

3. The Discipline Panel was comprised of Devon Saunders, Rami Kozman, and Andrew Warman (the “Panel”). Viktoria Anteby was present as Independent Legal Counsel to the Discipline Panel.

The Discipline Decision:

4. In its Discipline Decision, the Discipline Panel found that Jaskarn (Jazz) Samra (“Samra”) had contravened sections 4, 5, 6(1) and 39 of the Ontario Regulation

580/05 (the “Code of Ethics”), to the *Real Estate and Business Brokers Act (REBBA), 2002*, as follows:

i. Section 4 – (R*egistrant shall promote and protect the best interests of the registrant's clients*) - Through failing to make enquiries into the status of the mortgage financing of the Buyers, causing his clients have a negative financial exposure.

ii. Section 5 – (*Registrant shall provide conscientious service to the registrant's clients and customers and shall demonstrate reasonable knowledge, skill, judgement, and competence in providing those services*) - Through failing to put more thought and action into the transaction, especially given his knowledge of the financial history of his clients.

iii. Subsection 6(1) – (*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*) - Through failing to provide advice to ensure that his clients secured the financing to complete the transaction.

iv. Section 39 – (*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*) - Samra's conduct was neither disgraceful nor dishonourable as it did not involve any element of intentional misrepresentation, fraud or lack of trustworthiness. However, Samra had engaged in conduct that was unprofessional and unbecoming because he failed to delve deeper into the financing aspect of the transaction to confirm the status of the financing arrangement for his clients.

5. **Written Material Considered by the Panel for the Penalty Decision:**

1. Registrar's Submissions Regarding Penalty and Costs, by Shane Smith, Senior Legal Counsel for Real Estate Council of Ontario, ("Counsel for the Registrar").
2. Submissions of Jaskarn (Jazz) Samra regarding Penalty, submitted by Philip U. Okpala, counsel for Samra; ("Counsel for the Respondent").
3. Registrar's Book of Authorities, submitted by Counsel for the Registrar.
4. Registrar's Reply Submissions Regarding Penalty and Costs, submitted by Counsel for the Registrar.

Penalty being Sought by the Registrar:

6. RECO is seeking the following penalty:
   a) An Order that Samra pay a fine of $20,000.00, payable within 90 days of the Decision of the Panel.
   b) An Order that Samra successfully complete Real Estate Institute of Canada ("REIC") course number 2600: "Ethics in Business Practice" and notify the Registrar of such within 180 days of the Penalty Decision of the Panel.

7. RECO is not seeking an order of costs.

<u>SUBMISSIONS ON PENALTY BY THE REGISTRAR</u>

8. Counsel for the Registrar reiterated and highlighted:
   i. Key points in the testimony of Complainant that were relevant and influenced the Panel's findings of Samra's breaches of the Code of Ethics including:
      a. Samra represented the Buyers in the purchase of a property;
      b. Samra was advised and was aware of their precarious financial circumstances prior to proceeding with looking for and entering into an agreement to purchase a property;
      c. Samra advised them of the price range they should be looking for to purchase a property and supported them in submitting an offer on the 1A Property;

d. On Samra's advice, after the initial offer was not accepted, the Buyers increased their offer and later removed the financing condition as part of further negotiations with the Seller, which ultimately resulted in an agreement of purchase and sale for the property;
e. the purchase did not close as scheduled due to the Buyer's being unable to secure financing but closed only after an extension was obtained – which required using up the remaining funds that the Buyers had;
f. The 1A Property was eventually sold through power of sale proceedings because the Buyers were unable to afford the property.

ii. Key points in the testimony of Respondent, Jaskarn Samra that were relevant and influenced the Panel's findings of his breaches of the Code of Ethics, including:
a. He knew the Buyers had sold their previous property under financial distress and he was aware that the Buyers had financial difficulties, including Buyer A being the subject of a consumer proposal;
b. he was the one who suggested the Buyers purchase a property (as opposed to continue to rent) in order to start building equity;
c. he was advised by the Buyers that their budget was $500,000 to $550,000 and that they were pre-approved for a mortgage in this amount; and
d. he advised the Buyers about increasing the offer amount and that removing the conditions from their increased offer (including the financing condition) would cause them to present a "stronger offer" for the 1A Property.

iii. Determinations of the Discipline Panel based on the evidence, including that Samra:
a. Had no reasonable basis to think that financing had been arranged and/or secured;

b. Given his knowledge of the Buyers' financial history, Samra should have put more thought and action into the transaction by doing much more to enquire into the status of the Buyers' mortgage financing; and
c. Should have been proactive and performed the requisite due diligence in respect of the Buyers situation, including enquiring into the status of the Buyers' financing arrangements.

9. Counsel for the Registrar relied upon the nine (9) factors set out in the decided case, *Registrar v. Suzette Thompson, Appeals Committee of RECO, May 31, 2012* (the "*Suzette Thompson Case*"), [RECO Book of Authorities Re: Penalty and Costs Submissions ("BOA"), pg. 4], for their submission.

10. With respect to the nine (9) factors in the *Suzette Thompson Case*, Counsel for the Registrar submits that the factors weigh heavily against Samra, support a significant penalty and applies the factors as follows:

i. *The Nature and Gravity of the Breaches*

Counsel for the Registrar submits the following, that:

11. In the instant case, the nature and gravity of the breaches of the Code of Ethics by the Registrant, fall towards the more serious end of the spectrum.

12. Samra failed to meet the most important obligations of a Registrant, which is to look out for and promote the best interests of his Clients.

13. The failure of Samra led to serious repercussions for his Clients. The Clients lost the Property and ended up in a worse financial position, because of their dealings with Samra.

ii. *The Role of the Registrant in the Breaches*

Counsel for the Registrar submits the following, that:

14. The Panel ought to look at the Registrant's role in relation to the breaches (i.e., central vs peripheral), and should also consider whether the registrant's conduct was active/deliberate versus more negligent in nature.

15. In this instance, Samra's conduct was negligent in nature.

16. Further, on the "negligence" spectrum, Samra's conduct falls towards the "gross negligence" end, given that he was clearly aware of the financial challenges of his Clients but did not take what were clear and obvious steps to protect the Clients' interest in this transaction. Samra could have taken simple steps such as doing a proper assessment of his Clients' financing situation and ensuring that the financing clause was not discarded without a proper and thorough inquiry.

17. Further, had Samra carried out his responsibilities in representing the Clients, the stress and hardship that resulted would have been avoided.

iii. *Whether the Registrant Suffered or Gained, as a Result of the Breaches*

Counsel for the Registrar submits the following, that:

18. This factor weighs heavily against Samra, because he stood to receive a financial benefit, as a result of his conduct.

19. Samra earned a commission because his Clients entered a real estate transaction that closed.

iv. *The Impact of the Breaches on the Complainant*

Counsel for the Registrar submits the following, that:

20. The impact on the Complainant in this case was significant financial harm.

21. If Samra had properly carried out his responsibilities to his Clients, the stress and financial hardship that resulted from a purchase that the Clients could not afford, would have been avoided.

v. *The Need for Specific Deterrence*

Counsel for the Registrar submits the following, that:

22. The Panel should challenge itself to ensure that the penalty is sufficiently meaningful to dissuade the Respondent from recommitting the offence(s) in the future and refers the Panel to the decided case of R. *v. McGill*, [2016] O.J. No. 1346 (Ont. Court of Justice.) at para 97. [BOA, pg. 23].

23. To that end, requests that the penalty imposed by the Panel must be more than just 'the cost of doing business' because the message to the Respondent must be that *his actions fell below the standard expected of him*.

24. Further, the penalty should be so significant that it will be made clear to Samra that consumers and other registrants rely upon him to conduct himself in an ethical, honest, and competent manner.

vi. *The Need for General Deterrence*

Counsel for the Registrar submits the following, that:

25. The Panel is reminded that, General Deterrence is a particularly relevant penalty consideration in cases of professional discipline because the sanctions imposed by

a discipline committee are published and monitored by the profession, and the principle of general deterrence requires that the penalty imposed should be a deterrence to *other registrants* so that they do not engage in conduct similar to the Respondent's.

26. The Panel is also referred to the decided cases of *R. v. Thies*, 2014 CM 3007 at para 11 and *Cartaway Resources Corp. (Re)* [2004] 1 S.C.R. 672, at para 4. [BOA, pg. 74 and pg. 84, respectively].

27. Further, the penalty imposed by a discipline committee is a communication to the profession about a) what conduct is inappropriate, and b) the severity of different types of breaches of the Code of Ethics and that in this case, the penalty imposed by the Panel has a particularly important general deterrence component.

28. Further, the obligation of a registrant to look out for a client's best interests, including consideration of the client's financial interests and abilities, is paramount when considering that the purchase of a property is, in almost all cases, the most significant financial transaction a client will enter into in their entire life.

29. It follows that the penalty for disregarding that aspect of a client's interest must be significant, in order to demonstrate the very serious nature of Samra's conduct.

vii. *The Need to Maintain the Public's Confidence*

Counsel for the Registrar submits the following, that:

30. A primary consideration in imposing a penalty for unprofessional conduct is the collective reputation of the profession which includes the legitimacy/reputation of the profession's ability to self-regulate its members and points the Panel to the decided case of *Merchant v. Law Society of Saskatchewan*, [2014] S.J. No. 245, (Sask. C.A.) at para 119. [BOA, pg. 162].

31. The public should have confidence that, when they retain and engage with real estate professionals, they will be treated fairly, conscientiously, and in accordance with the rules.

32. The Panel should be reminded of its findings which show that the Respondent breached provisions of the Code of Ethics that are specifically directed at ensuring fairness and continuing public confidence in the profession.

33. Samra's breaches involve matters of fundamental importance with respect to maintaining the confidence of the public, namely, the basic and important obligation of a registrant to act in best interest of a client and to exhibit the competence required to service the client.

34. In addition, the public should have confidence that when a registrant breaches the ethical standards, that the self-disciplinary system will appropriately address the breaches.

viii. *The Degree to Which the Breaches are Outside the Range of Acceptable Conduct*

Counsel for the Registrar submits the following, that:

35. This factor requires the Panel to assess where Respondent's actions fall on a sliding scale of misconduct from least serious to most serious.

36. As noted at the outset, it is RECO's position that the misconduct in this case falls towards the more serious end of the spectrum, given that it involves a fundamental failure to look out and protect a client's interests in a trade. Particularly in a circumstance where a registrant knows, as Samra did, that the client has significant financial issues.

ix. The Range of Sanction in Similar Cases

Counsel for the Registrar submits the following, that:

37. The Panel should be reminded that previous cases are helpful guides to determining appropriate penalty. Therefore, a comparison of similar cases is an important factor when considering the appropriateness of a disciplinary penalty and Counsel for the Registrar points the Panel to the case of *Duval v. College of Nurses Ontario,* [2007] O.J. No. 3992, (Ont. Div. Ct.). [BOA, p. 180 - 185].

38. The following cases as helpful to the Panel, because each involves, to some degree, a registrant not taking steps to protect a client or act in a client's best interest [BOA, Pg. 186 – 202]:

    i. *Olayinka Oduwole* - June 28, 2019
        a. *Oduwole* was fined $11,000 and required to complete an education course pursuant to an agreed upon resolution.
        b. *Oduwole* failed to act competently and protect his client's own interests by not adding a financing condition when there was uncertainty about his client's ability to afford the proposed purchase price for the property.

    ii. *Biliana Dib* – September 2, 2020
        a. Dib was fined $9,000 and required to complete an educational course as part of an agreed resolution.
        b. Dib failed to provide competent service and protect her client's interests when she failed to include any condition in the Agreement of Purchase and Sale to allow for a review of zoning to ensure her client would be able to use the property as intended.

    iii. *Del Burton* - May 3, 2022

a. Burton was ordered to pay a fine of $7,500 as part of an agreed-upon resolution.
b. Burton failed to protect his client's best interest and did not act with competence when he did not include a financing condition as part of his client's offer to purchase a property.

39. Further, the most analogous case is the *Oduwole* decision as it is the most similar factual situation but that the penalty should be higher in Samra's case than in *Oduwole* because:
    i. Samra was aware that his clients had significant financial issues and did nothing to inquire into the matter or insure there was some protection around financing;
    ii. the harm caused by Samra's lack of diligence and competence was significantly greater;
    iii. the *Oduwole* decision was issued in 2019, and fines have increased since that time; and
    iv. the *Oduwole* matter was resolved by way of an Agreed Statements of Facts and Penalty, as opposed to going through a hearing like Samra. The Discipline Committee has recognized that penalties which result from an agreed upon resolution are less than penalties for similar matters that go through a contested hearing.

40. Further, the same findings as in the *Oduwole* matter following a hearing would likely have resulted in a penalty at the very upper limit of the jurisdictional and references the decided case of *RECO v. Brian Gogek*, Discipline Decision, January 26, 2018, at para 26 (emphasis added) [BOA, Pg. 203].

SUBMISSIONS ON PENALTY BY THE RESPONDENT

41. The Respondent, through counsel, submits that one of the primary grounds for the Respondent's position regarding RECO's Penalty submission, is the financial

hardship that the proposed penalty would impose on the Respondent. The submission points to the significant challenges currently faced by the Respondent in the context of the prevailing Real Estate Market conditions. The industry has undergone fluctuations, making it increasingly difficult for real estate professionals to sustain their income levels and imposing a $20,000.00 Penalty to be paid within a short timeframe would unduly burden the Respondent and exacerbate his financial challenges.

42. The Respondent requests the Panel to consider his individual circumstances before determining the appropriate Penalty and points out that he has a previously unblemished record, and this incident is an isolated occurrence. Further, he has expressed remorse for his actions and has taken steps to rectify any harm caused, therefore, the Penalty as proposed by RECO may not be commensurate with the nature of the offense and he urges the Panel to exercise discretion in this matter.

43. The Respondent submits that while he understands the importance of ensuring ethical standards within the real estate profession, he believes that mandating the completion of a specific course may not be the most effective means of addressing the violations. He is committed to continuous professional development, therefore he proposes alternative measures, such as mentorship or additional training, tailored to address the specific concerns raised in this matter.

44. The Respondent submits that the proposed timeframes for payment and completion of the course are unduly restrictive, considering his financial and logistical challenges. He therefore respectfully requests an extension of the timelines to allow for a more reasonable and attainable compliance period.

45. The Respondent accepts the application of the *Suzette Thompson, 2012* factors in respect of determining penalty and his submissions through counsel is set out below.

i. Nature and Gravity of the Breaches

46. Counsel for the Respondent submits that the breaches were not of a severe nature as they were isolated incidents and there is no pattern of misconduct in the respondent's history. The gravity of the breaches, when objectively evaluated, does not warrant the imposition of such a substantial penalty as proposed by RECO.

ii. Role of the Registrant in the Breaches

47. Counsel for the Respondent submits that his role in the breaches was not central because he was not the primary instigator. Any involvement on his part can be attributed to factors beyond his control and his intent was not malicious.

iii. Whether the Registrant suffered or gained as a result of the Breaches

48. Counsel for the Respondent submits that he did not gain financially from the breaches. It is submitted that the Respondent has suffered both financial and reputational damages and has already taken steps to remedy the situation. Therefore, this should be considered in determining a fair penalty.

iv. Impact of the Breaches on the Complainant or Others

49. Counsel for the Respondent submits that the impact on the Complainant or others was minimal, has been rectified, and there is no ongoing negative impact.

v. Need for Specific Deterrence

50. Counsel for the Respondent submits that the Respondent has demonstrated a clear commitment to correcting his actions and proposes that additional measures for specific deterrence, such as targeted training or mentorship, would be more appropriate and effective than an excessively punitive financial penalty.

vi. Need for General Deterrence

51. Counsel for the Respondent submits that the proposed penalty appears disproportionate for achieving general deterrence and suggests that a more balanced approach which considers industry standards and the Respondent's commitment to ethical conduct would better serve the interests of general deterrence.

vii. Need to maintain Public Confidence

52. The Respondent acknowledges the importance of maintaining public confidence in the integrity of the profession and suggests that imposing a fair and reasonable penalty, coupled with remedial actions taken, would contribute more positively to restoring and maintaining public confidence.

viii. The Degree to which the Breaches are Outside the Range of Acceptable Conduct

53. Counsel for the Respondent submits that the breaches, when assessed objectively, fall within the range of acceptable conduct for similar cases because they do not represent egregious or intentional violations of ethical standards.

ix. The Range of Sanctions in Similar Cases

Counsel for the Respondent submits the following, that:

54. A comparative analysis of similar cases reveals inconsistencies in the application of penalties. The proposed penalty of $20,000.00 exceeds the range of sanctions typically imposed in cases with comparable circumstances.

55. The dedication of the Discipline Committee to upholding the standards of the real estate profession must be appreciated. However, the Panel is urged to consider the unique circumstances surrounding this case and to adopt a more measured and tailored approach to determining the Penalty.

Penalty Suggested by the Respondent:

56. Any penalty imposed on the Respondent by the Panel will impose an untold financial hardship in an already very desperate financial situation faced by the Respondent. It is submitted that the Respondent lost over $50,000.00 in the course of this transaction to the Complainant and does not foresee any chance of recovery the money. Further, the Respondent has had little or no trades in the past one (1) year and asks that any penalty imposed should be minimal and should be differed for at least the next two (2) years.

57. The Respondent requests that the Panel should give careful consideration to the nuanced circumstances surrounding this case and suggests that a penalty which takes into account the factors outlined in the Respondent's submissions, including the isolated nature of the breaches and the respondent's proactive efforts to rectify the situation, would be more just and in line with the principles of fairness and proportionality.

REPLY SUBMISSIONS ON PENALTY BY THE REGISTRAR

Counsel for the Registrar in reply to the Respondent's submissions, replies as follows, that:

58. Financial hardship is not a relevant consideration for the Panel when considering a penalty in this matter.

59. Financial hardship is not a factor to be considered under the *Suzette Thompson* criteria. Therefore, a lesser fine, based on financial hardship should not be considered in this matter.

60. Using a registrant's financial situation as a factor when considering penalties for breaches of the Code of Ethics, would result in variations in penalties, depending on the financial situation of individual registrants.

61. It would also require additional hearing time to be included as part of the penalty phase so that there would be an opportunity for actual evidence to be put forward (and challenged) as to a registrant's particular financial situation/circumstances.

62. The Respondent has not presented any evidence to the Panel regarding his financial situation.

63. The Respondent's web profile indicates that in 2022, the Respondent was an Executive Award recipient, an award that is based on high commission earnings.

64. Notably, while a *financial hardship argument* was put forward in the Penalty Submissions in *Desai v. Real Estate Council of Ontario*, January 24, 2023, the Discipline Panel did not consider the registrant's financial circumstances/hardship in assessing and determining the appropriate penalty for the registrant. Therefore, this is the proper approach and should be followed by the Panel in this instance.

PANEL'S DECISION ON PENALTY

After carefully considering the Penalty Submissions of both parties, the Panel's decision on Penalty in this matter is set out below, with reasons for its decision:

65. The Panel is mindful that the Respondent has made only a bald claim of financial hardship. No evidence of financial hardship, in respect of the Respondent has been put before the Panel.

66. The Panel agrees that using a registrant's financial situation as a factor when considering penalties for breaches of the Code of Ethics would result in variations in penalties and would certainly be a diversion and a distraction to the discipline process. Such a consideration would certainly not be in support of deterrence but will make the discipline machinery unfair and ineffective.

67. The Panel takes note of the *Desai v. Real Estate Council of Ontario*, January 24, 2023, matter in which the Discipline Panel did not consider the registrant's financial

circumstances/hardship in assessing and determining the appropriate penalty for the registrant and the Panel agrees that this is the proper approach.

68. With the foregoing, the Panel's deliberation and decision adhered to the precedence established in *Registrar v. Suzette Thompson, 2012*. The Panel's application of the nine (9) factors in its Penalty determination is set out below.

i. **The Nature and Gravity of the Breaches of the Code of Ethics**

69. The Panel decides that the nature and gravity of the breaches falls within the middle of the spectrum and is therefore considered to be moderate.

70. In considering the Respondent's submission, that the breaches were not of a severe or intentional nature, as they were isolated incidents, the Panel considers that even if the breaches were not intentional and were isolated, there is some degree of severity.

71. The Panel recognizes that the Respondent failed to adequately inquire about his Clients' financial situation and to adequately advise his Clients on their purchase of the Property, in a situation where he knew, or reasonably ought to have known that the Property was not suitable, given his Clients' financial situation. This failure moves the breaches from the low end of the nature and gravity scale.

72. The Panel further recognizes that the foregoing amounts to the Respondent failing in his most important obligation, which is to use his professional skills and judgment to properly advise and promote the best interests of his Clients. This has the breaches moving further on the nature and gravity scale but keeping it in the mid zone of the spectrum.

73. While the Panel can appreciate the Registrar's submission that the nature and gravity of the breaches of the Code of Ethics are towards the more serious end of the spectrum, the Panel takes the following into consideration:

i. That the failures by the Respondent were not done with malice or reckless indifference.
ii. That the failures by the Respondent were more as a result of inaction.

74. The Panel is in no way minimizing the Respondent's obligation under the Code of Ethics but takes into consideration the degree of harm to the parties to the transaction and the degree of harm to the public. In this case, the Panel has concluded that the degree of the impact was moderate.

ii. <u>The Role of the Offending Member in the Breaches</u>

75. The Panel finds that the Respondent's role was central because he was solely responsible for breaching the Code of Ethics, by failing to take the necessary steps to protect his Clients' interest in this transaction by properly assessing the Clients' financing situation and ensuring that a financing clause was not discarded without proper thought and inquiry.

76. The Panel maintains that the Respondent's conduct was negligent in nature but will not support the notion of "gross negligence" because he was somewhat misled by his Clients, who told him that they had the financing in place.

77. Even with the misleading information provided by his Clients, the Respondent could have done more to confirm that his Clients were in a position to increase their offer and afford the Property. Further, he could have provided better advice on the financial condition. The Panel has concluded that the Respondent did not act with malice.

iii. Whether the Offending Member Suffered or Gained because of the Breaches

78. The Panel has determined that the Respondent gained financially because he earned the commission at the close of the transaction.

79. At all material times during the transaction, including the time of the breaches, the Respondent was of the mind that he was going to make money because he stood to gain a commission.

80. The Panel agrees that the loan provided to the Respondent's Clients for closing the transaction may not have been repaid but it does not consider the loan in its assessment of this factor because the loan was "after the fact". Essentially, the loan was neither a variable in the Agreement of Purchase and Sale and therefore not part of the real estate transaction under scrutiny in these reasons.

81. The Panel notes that the Respondent cites reputational damage and steps being taken to remedy the situation. However, the Panel sees this a bald claim, lacking support.

iv. The Impact of the Breach on the Complainant and Others

82. The Respondent's Clients lost everything, including their deposit monies and a place to live and thus have experienced a profoundly negative impact.

83. The Panel reiterates that the Respondent failed to counsel and to look further into his Clients' financial position before removal of the financial condition.

84. If the Respondent had used his professional skills and judgment to properly advise, counselled and promoted the best interests of his Clients his Clients may not have

entered into the transaction to purchase the 1A Property. As such the Clients would likely not be in the instant negative situation.

85. The Panel also notes that others could be negatively impacted because of the Respondent's breach of the Code of Ethics. The Respondent's failures and resultant breaches definitely impacts his Clients' perception and the public's view of the standards of conduct of real estate professionals.

v. <u>The Need for there to be Specific Deterrence to Protect the Public</u>

86. The Panel notes the unsupported submission by the Respondent that he "has demonstrated a clear commitment to correcting their actions". The Panel does not know what the Respondent means because no evidence was presented to support such a claim.

87. The Panel is concerned because there is no evidence of remorse on the part of the Respondent. The Respondent has even dismissed the proposed professional development sanction of the Ethics in Business Practice Course which will remind the Respondent of the importance of ensuring ethical standards within the real estate profession. The Panel identifies this as an aggravating factor because it demonstrates that the Respondent requires a higher level of specific deterrence than normal.

88. The Panel is mindful of the suggested alternatives to completion of a specific course by the Respondent and sees this as deflection and minimization of the disciplinary process by the Respondent.

89. The Panel notes that mentorship and guidance is always available at the Respondent's brokerage and was available during the time of the commission of the breaches.

90. Further, the suggestion of "additional training tailored to address the specific concerns raised in this matter" is also noted. The Panel is fully aware that supportive training which addresses specific shortcomings of real estate professionals is always available internally at the brokerage.

91. The Panel, in assessing the suggested alternatives is mindful that, in order for sanctions to be effective, the Registrar uses sanctions that are external to brokerages which based on assessment and analysis will serve to promote positive changes in behaviour of Registrants, in the interest of the public.

92. The Panel is mindful that the penalty in this matter ought to be sufficiently meaningful, to dissuade the Respondent from recommitting the offence(s) in the future and pays attention to the decided case of *R. v. McGill, 2016.*

93. To that end, the Panel agrees that the penalty imposed by the Panel ought to be more than just 'a cost of doing business', because the message to the Respondent must be that his actions fell below the standard expected of him.

94. The Panel accepts that the contravention of the Code of Ethics on the part of the Respondent was due to negligence and was neither deliberate nor malicious. There was no finding of fraudulent or malicious intent on the part of the Respondent.

95. The Panel finds that the Respondent has not accepted responsibility for his actions and there is no demonstration or evidence of change towards his professional responsibility. The Panel identifies this as an aggravating factor because it demonstrates that the Respondent requires a higher level of specific deterrence than normal. In the final analysis, the penalty must be of such that it will definitely serve as a reminder and specific deterrent to the Registrant from repeating similar breaches or committing any other breaches of the Code of Ethics.

vi. <u>The Need for a General Deterrence to Protect the Public</u>

96. The Panel agrees that one of the primary obligations of a registrant is to look out for a client's best interests, including consideration of the client's financial interests and abilities, and that this is paramount when considering that the purchase of a property is, in almost all cases, one of the most significant financial transactions a client will enter in their life.

97. Any failure on the part of the registrant in a real estate transaction, can lead to failures to protect consumers and not complying with these obligations, undermines public trust in property transactions and respect and trust for registrants.

98. Further, the penalty imposed by a discipline committee is a communication to the profession about a) what conduct is inappropriate, and b) the severity of different types of breaches of the *Code of Ethics*.

99. The Panel notes that the conduct in this matter, while not egregious and falling in the mid-range of the spectrum, still gives rise to contraventions of the *Code of Ethics* and, as such, requires the Panel to pay attention to the fact that the public must be protected from 'bad actors' in order to maintain public confidence in the real estate profession.

100. The Panel therefore agrees that General Deterrence is a relevant penalty consideration in this case, to deter other registrants against engaging in conduct, similar to the Respondent's and pays attention to the decided case of *R. v. Thies, 2014*, referenced by Counsel for the Registrar. The conduct in question in this case falls in the mid-range of the spectrum for this factor.

vii. <u>The Need to Maintain the Public's Confidence in the Integrity of the Profession</u>

101. The Panel appreciates that the Respondent acknowledges the importance of maintaining public confidence in the integrity of the profession and that a fair and reasonable financial penalty is warranted.

102. The Panel however is not aware of any "remedial actions taken" by the Respondent.

103. While the Panel observes that the breach of the *Code of Ethics* by the Respondent is not particularly egregious, no breach of the Code of Ethics should be minimized and sanctions must be levelled to restore and maintain public confidence.

104. The Panel agrees that a primary consideration in imposing a penalty for unprofessional conduct is the collective reputation of the profession which includes the legitimacy and reputation of the profession's ability to self-regulate its members. The Panel pays attention to the decided case of *Merchant v. Law Society of Saskatchewan, 2014* and notes that the Respondent violated the provisions that are specifically directed at ensuring fairness and continuing public confidence in the profession.

105. It is the Panel's position that it is of the utmost importance that breaches of the Code of Ethics be dealt with, including imposition of monetary penalties and successful completion of educational courses to enhance Registrants' skills and competence, in a manner that will restore and maintain the public's confidence, in the integrity of the real estate profession.

106. The Panel has determined that, in this matter, the penalty for the Respondent's disregard for his Clients' interest, must be of such quantum that it demonstrates the degree of the nature and gravity of the Respondent's conduct.

viii. Degree to which the Breaches are Regarded as Being Outside the Range of Acceptable Conduct

107. Taking the totality of the circumstances, the Panel finds that the Respondent's breach of the of the *Code of Ethics* falls within the moderate range of the spectrum of conduct, which is still well outside the range of what is acceptable.

108. The Panel reiterates that, while the Respondent breached his obligations to his Clients and the public, which is well outside the range of what is acceptable, the conduct was not considered to be particularly egregious.

ix. Range of Sanctions in Similar Cases

109. The Panel agrees that previous cases are helpful guides to determining appropriate penalty, hence, a comparison of similar cases is an important factor in the consideration of a disciplinary penalty. The Panel therefore pays attention to the case of *Duval v. College of Nurses Ontario, 2007* in its determination.

110. Counsel for the Registrar submitted three (3) cases for consideration by the Panel. The penalties in the cases ranged from $7,500.00 to $11,000.00, with two (2) requiring the respondents to complete educational courses, including:

    i. *Olayinka Oduwole,* June 28, 2019 – A fine of $11,000.00 plus an education course.
    ii. *Biliana Dib*, September 2, 2020 – A fine $9,000.00 plus an education course.
    iii. *Del Burton*, May 3, 2022 - A fine of $7,500.00, only.

111. All three (3) cases were settled by "agreed upon resolution", where the respondents took responsibility for their actions and did not proceed to a hearing.

112. Counsel for the Registrar uses the *Oduwole* case as the benchmark for suggesting the Penalty in this matter and points out that the Penalty in this matter should be higher than *Oduwole* case because:

    i. the instant breaches are more significant;
    ii. the harm caused by the Respondent in this matter is significantly greater;
    iii. the Oduwole decision was issued in 2019, and fines have increased since that time; and
    iv. the *Oduwole* matter was resolved by way of an Agreed Statements of Facts and Penalty ("ASFP"), as opposed to going through a hearing like the instant matter and as such penalties which result from an agreed upon resolution are less than penalties for similar matters that go through a contested hearing.

113. Counsel for the Registrar references the *RECO v. Brian Gogek, Discipline Decision, January 26, 2018, at para 26 (emphasis added)* to demonstrate that a settlement-based resolution can make a difference in the determination of the appropriate penalty.

114. The *Gogek, Discipline Decision* proceeded to a hearing and in the *Gogek* Penalty Decision released on January 26, 2018, a panel of the Discipline Committee ordered a penalty of a fine of $18,000.00 and the completion of the REIC Ethics and Business Practice course.

115. The Panel takes issue with the submission by Counsel for the Registrar that penalties imposed by way of a settlement, usually by way of an ASFP, should generally result in a reduced penalty for a registrant. Settlements by way of an ASFP reflect that the registrant has accepted some responsibility for their actions and in addition, saved the time and costs that would otherwise be expended on a contested hearing.

116. Counsel for the Registrar further suggests that "The penalty in this case should be greater than in the cases resolved by way of an ASFP and fall more closely in line with cases where there was a contested hearing and a decision made by the Panel."

117. The Panel appreciates the options available to registrants for resolving discipline matters, either by way of a resolution by ASFP or proceeding to a hearing and sees the resolution options a matter of choice for registrants, not a norm.

118. The Panel is mindful of the legal principles of Natural Justice and Due Process:

    a) Natural justice requires that a person receive a fair and unbiased hearing before a decision is made that will negatively affect them; and
    b) Due process is related to the presumption of innocence. It involves a thorough examination of the facts of each case and recognition of the importance of protecting the legal rights of individuals against whom allegations are made.

119. The Panel understand the rationale and the thinking behind the of use of resources, the perceived savings and the perceived acceptance of responsibility, when a matter does not proceed to a hearing. Nevertheless, since the resolution options are a matter of choice for registrants and not a norm, plus bearing in mind the importance of the legal principles of natural justice and due process, the Respondent asserting his right to have any alleged contraventions of the Code of Ethics determined by the Panel by way of a hearing, should not and cannot be used as a means to determine a higher penalty. Determining and imposing the quantum of penalty by way of a settlement, usually by way of an ASFP, becomes subjective rather than objective.

120. The Panel considers that to consider the Registrant's choice of having a hearing to resolve the allegations as a factor to determining a higher penalty is not in the interests of justice or procedural fairness, or for the benefit of the profession, and could result in damage to the Registrants' reputation and could lead to a decrease

in registrant and public confidence in the regulatory machinery and the real estate profession.

PENALTY

121. Having considered and weighed the factors enumerated above, the Panel hereby orders the Respondent to:

   a) Pay a fine of $10,000.00 to RECO within 180 days of the release of the Penalty Decision of the Panel.

   b) Successfully complete the Real Estate Institute of Canada ("REIC") course number 2600: "Ethics in Business Practice" and notify the Registrar of such within 180 days of the release of the Penalty Decision of the Panel.

COST

122. The Panel noted the numerous instances of unreasonable, frivolous, and vexatious delays on the part of the Respondent including failure to file any responding material at the start of the Discipline Hearing and prior to the Penalty Hearing. Those instances caused delays to the process, forcing the hearing to be halted while the Respondent and his counsel filed their materials and then everyone involved review the material.

123. While the Registrar, through counsel and the Hearings administrative staff ensured that the Respondent was fully apprised of the process, including timelines, no material was filed on time.

124. Such unreasonable, frivolous, and vexatious actions which amount to scant regard for the process by Registrants is censured by the Panel and is unacceptable.

125. The Panel is cognisant of Rule 17 of the REBBA Rules of Practice which deals with *Cost*, with specific reference to Rule 17.01 - *When Costs May Be Ordered* – "The

Discipline Committee or Appeals Committee may Order a Party to pay the costs if paragraph 5 of subsection 21(4) of the Act applies (i.e., where the Registrant can be ordered to pay costs to RECO) or if the conduct or course of conduct of a Party has been unreasonable, frivolous or vexatious or a Party has acted in bad faith."

126. Paragraph 5 of subsection 21(4) of the *Real Estate and Business Brokers Act, 2002*, reads as follows: "If the discipline committee makes a determination under subsection (1) that a registrant has failed to comply with the code of ethics, it may order any of the following as appropriate: 5. Fix and impose costs to be paid by the registrant to the administrative authority or to the Minister of Finance if there is no designated administrative authority."

127. The Panel is further guided by Subsection 17.1(2) of the *Statutory Powers Procedure Act* which reads as follows: "A tribunal shall not make an order to pay costs under this section unless, (a) the conduct or course of conduct of a party has been unreasonable, frivolous or vexatious or a party has acted in bad faith; and (b) the tribunal has made rules under subsection (4)."

128. The Respondent, even though he was aware, did not care to follow the rules governing the tribunal and discipline process. The Panel has the onus to ensure that procedural fairness is practiced, and it is necessary that the Panel ensure that the Respondent is deterred from engaging in any behaviour that pays scant regard to the discipline process. This will promote specific deterrence in the future and also send a message to the profession for general deterrence.

129. With the foregoing, provisions (Rule 17.02, REBBA Rules of Practice, Paragraph 5 of subsection 21(4) of the *REBBA, 2002* and Subsection 17.1(2) of the *Statutory Powers Procedure Act*) the Panel hereby orders the Respondent to:

   a) Pay a Cost of $500.00 to RECO, within 180 days of the release of the Penalty Decision of the Panel.

[Released: June 19, 2024]

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-

JASKARN SAMRA

DISCIPLINE DECISION AND REASONS FOR DECISION

APPEARANCES:

For the Registrant: Philip Okpala

For the Real Estate Council of Ontario: Jonathan Hurter, counsel

Heard in Toronto on: February 28, 2022 and March 1, 2022

FINDINGS: In violation of Sections 4, 5, 6(1) and 39 of the Code of Ethics.

ORDER: Counsel for the Registrar, *REBBA 2002* to deliver written submissions to the Panel and to the Respondent on the issue of penalty and costs within 15 days of the date on which the Panel's decision and reasons are delivered.

The Respondent shall deliver to the Panel and to Counsel for the Registrar, *REBBA 2002* its written submissions on penalty and costs in response to Counsel for the Registrar, *REBBA 2002*'s submissions within 15 days of the date on which Counsel for the Registrar, *REBBA 2002's* submissions on penalty and costs are delivered to the Respondent.

Counsel for the Registrar, *REBBA 2002* shall deliver to the Panel and to the Respondent its reply to the written submission on penalty and costs of the Respondent within 5 days of the date on which the Respondent's submissions on penalty and costs are delivered to Counsel for the Registrar, *REBBA 2002*.

Any inquiries relating to the delivery of the above-mentioned documents should be directed to the Manager, Discipline and Appeals Hearings.

COSTS AND EXPENSES: If appropriate, submissions to be made on costs and expenses with submissions on penalty.

WRITTEN REASONS: *attached*

REASONS FOR DECISION

INTRODUCTION

1. This Hearing took place on February 28, 2022 and March 1, 2022 in the presence of Jaskarn (Jazz) Samra (the "Respondent" and/or "Samra"); Philip Okpala, counsel for Samra; and, Jonathan Hurter, counsel for the Real Estate Council of Ontario ("RECO"). The Discipline Panel ("Panel") was comprised of Devon Saunders, Rami Kozman, and Andrew Warman. Viktoria Anteby was present as Independent Legal Counsel to the Panel.

ALLEGATIONS BY THE REGISTRAR, *REBBA 2002*

2. It is alleged that Jaskarn Samra failed to comply with the Code of Ethics (the "Code") as follows:

A. In furtherance to the Buyers' purchase of the 1-A Street Property, Samra referred the Buyers to Individual A to Individual A, someone Samra knew, or reasonably should have known, was not registered under MBLAA to deal/trade in mortgages, contrary to section(s) 4, 5, 6(1), 8(1), 38, and/or 39 of the Code. In addition, or in the alternative, Samra consulted with Individual A about the Buyers 'financing of the Property in a situation when he knew, or reasonably should have known, Individual A was not registered under MBLAA to deal / trade in mortgages, contrary to section(s) 4, 5, 8(1), 38, and/or 39 of the Code.

B. In furtherance to Buyer's purchase of the Property, Samra failed to adequately inquire with Buyers about their financial situation, contrary to section(s) 4, 5, 38, and/or 39 of the Code. In the alternative, Samra failed to adequately advise Buyers on their purchase of the Property in a situation where he knew, or reasonably ought to have known, the Property was not suitable given the Buyers' financial situation, contrary to section(s) 4, 5, 6(1), 38, and/or 39 of the Code.

C. Failed to appropriately advise the Buyers on the significance of the Financing Condition and/or waiving or removing of same, contrary to section(s) 4, 5, 38, and/or 39 of the Code.

D. Failed to appropriately advise the Buyers on entering the Agreement, which was unconditional on financing, in a situation when he knew, or reasonably should have known, that no financing had been arranged and/or secured, thereby placing the Buyers in a financially precarious position and causing the Buyers to compensate the Sellers, contrary to section(s) 4, 5, 6(1), 38, and/or 39 of the Code.

E. Informed or otherwise permitted for the communication of the fact that the Buyers had been approved for $545,000.00 in mortgage financing when Samra knew, or reasonably should have known, this was not true, contrary to section(s) 4, 5, 6(1), 37(1), 38, and/or 39 of the Code.

F. Prior to acquiring for himself an interest in real estate, Samra failed to deliver a written notice to all the parties to the Agreement, and/or failed to obtain written acknowledgements from all the parties of having received said notice, that he was doing so, contrary to section(s) 3, 5, 38 and/or 39 of the Code.

G. Indicated to the Buyers that the Promissory Note was to be a no-interest loan, only to then charge them interest at a rate of 8%, contrary to section(s) 3, 4, 5, 38, and/or 39 of the Code.

H. Facilitated the Promissory Note, contrary to section(s) 3, 4, 38, and/or 39 of the Code.

l. Charged or otherwise attempted to collect the Additional Amounts, contrary to section(s) 35 and/or 39 of the Code.

3. The Registrar, *REBBA 2002* alleged that Jaskarn Samra breached the following sections of the Code:

Fairness, honesty, etc.

Section 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

Section 4 - A registrant shall promote and protect the best interests of the registrant's clients.

Conscientious and competent service, etc.

Section 5 - A registrant shall provide conscientious service to the registrant's clients and customers and shall demonstrate reasonable knowledge, skill, judgement, and competence in providing those services.

Providing opinions, etc.

Subsection 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.

Services from others

Subsection 8(1) - A registrant shall advise a client or customer to obtain services from another person if the registrant is not able to provide the services with reasonable knowledge, skill, judgment, and competence or is not authorized by law to provide the services.

Financial responsibility

Section 35 - A registrant shall be financially responsible in the conduct of business.

Inaccurate representations

Subsection 37(1) - A registrant shall not knowingly make an inaccurate representation in respect of a trade in real estate.

Error, misrepresentation, fraud, etc.

Section 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.

Section 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 aregistrant.

4. **EVIDENCE OF THE PARTIES**

A. EXHIBIT 1 - Allegation Statement dated June 10, 2019
B. EXHIBIT 2 - Amended Notice of Hearing, dated January 11, 2022
C. EXHIBIT 3 – RECO's Book of Documents, dated January 27, 2022
D. EXHIBIT 4 – Samra's Book of Documents, dated February 28, 2022

WITNESSES FOR THE REGISTRAR, *REBBA 2002*

Witness # 1 - Edmund Buyer A

5. Buyer A is the Complainant. Buyer A and his spouse Buyer B, together referred to by RECO as Buyers (hereinafter referred to as “the Buyers”), are front and centre of the Complaint and the matter before the Panel.

6. Buyer A is a transit driver by profession and has worked with various transit agencies, including the Toronto Transit Commission and Burlington Transit.

7. The Buyers met Samra after Samra sold a house in the Buyers’ neighbourhood in Mississauga, Ontario and Samra shared his fliers in the neighbourhood.

8. The Buyers were the owners of the residential property at 2B Crescent, City A (“2B Property”) where they resided for approximately 14 years. They were experiencing serious financial difficulties, including having a Canada Revenue Agency (“CRA”) lien registered on their 2B Property, so they entered into consumer proposals to deal with their debts.

9. The Buyers spoke with Samra and told Samra about their financial situation. They entered into a Listing Agreement/Seller Representation Agreement with Samra who then listed the 2B Property. Samra was not successful with selling the 2B Property. The Buyers cancelled the listing and took the 2B Property off the market. Even after the failure by Samra to sell their property, the Buyers kept in touch with Samra.

10. As an alternative to selling, the Buyers then attempted to refinance the 2B Property.

11. In an attempt to refinance the 2B Property, Samra introduced the Buyers to Individual A”, someone whom they did not know previously and had been told by Samra was a mortgage broker. The Buyers consulted with Individual A, but the refinancing did not work out, partially because of the CRA lien.

12. No mortgage document went through Samra and the Buyers did not speak with Samra about the details of the financing. The Buyers were the ones who dealt with Individual A, but Samra kept in touch during their dealings with Individual A. During the refinancing process, the Buyers had lost contact with Individual A. When they called Samra about not being able to contact Individual A, they were told that Individual A was in the United States of America and was experiencing some issues.

13. After two failed attempts, (i.e. failure with the sale of the 2B Property and failure with the refinancing) the Buyers listed the 2B Property with another real estate agent and the property was sold. The Buyers paid out all of their outstanding debts, including the CRA liability and had $49,000.00 left in hand.

14. Subsequently, the Buyers contacted Samra and provided Samra with an update of their financial situation. The Buyers made it very clear to Samra that they had $49,000.00 left after paying off their debts and they were living in a rental property. They also told Samra that they were hoping to move back into a house. Samra agreed and told them that it was a good idea because once they moved back into a house, they will start building equity and their financial circumstance will be improved. As a result, the Buyers received listings from Samra and Samra started to show them properties. During this time, the Buyers told Samra that they did not want Individual A to deal with the mortgage for the property they were purchasing.

15. Samra sent listings to and showed the Buyers properties in Brampton within the price range of $500K to $525K. Samra determined the $500K range from "associates". The Buyers, with the assistance of Samra, eventually put in an offer for a property at 1A Street. City B ("1A Property") for $525,000.00. The Buyers were confident that Samra was acting in their best interest because they provided full disclosure to Samra about their financial situation and impressed upon Samra that $49,000.00 was the only money they had after paying off their debts.

16. On April 29, 2015, The Buyers attended the 1A Property offer presentation with Samra as their representative. The Buyers' offer for $525,000.00 with financing and inspection conditions and a July 23, 2015, closing date was rejected by the Seller. Samra told the Buyers that he was going to make a telephone call to the "broker" because two other families were bidding on the 1A Property and the Buyers needed to improve their offer. Samra returned and told the Buyers that they could offer as high as $545K. On cross-examination, Buyer A admitted that he did not know which mortgage broker Samra spoke with but believed it was a "female" and possibly Individual A. Buyer A then admitted that he did not really know who Samra spoke with.

17. With the advice of Samra, The Buyers put in their improved offer of:

    a. Purchase Price: $545,000.00, an increase of $20,000.00;
    b. Deposit: $10,000.00;
    c. Conditional: Financing & Inspection; and
    d. Completion Date: July 23, 2015.

18. As the negotiation ensued and on the further advice of Samra, the Buyers removed the financing condition. The *improved offer* was then accepted by the Seller.

19. On the basis of what Samra told the Buyers at the offer presentation, the Buyers were confident that they were approved for a mortgage of $545,000.00. The Buyers were under the impression that financing was "a done deal".

20. It was only after the Buyers made the deposit of $10,000.00 that Samra told them that Individual A was the mortgage broker he was dealing with on this matter. This was a disappointment to the Buyers because they had already told Samra that they did not want to work with Individual A because they learned that Individual A was not a mortgage broker. Nevertheless, the Buyers consulted with Individual A and made approximately 15 to 20 mortgage applications.

21. On July 21, 2015, two days before the closing date of the transaction, the Buyers found out that they were not approved for a mortgage.

22. On July 23, 2015, the transaction for the 1A Property did not close because no financing was in place and as a result, the Buyers had to start paying interest to the Seller. The Buyers gave Samra the $39,000.00 which they had left out of the $49,000.00, for a further deposit into the broker's account to stop the Seller from taking legal action against them.

23. The Buyers eventually received mortgage financing but were still short on funds for closing because the $49,000.00 was used up for interest compensation to the Seller, as a result of the delayed closing. It was then that Samra offered to loan the Buyers $40,000.00 and the Buyers accepted Samra's offer. At the time when Samra offered the loan to the Buyers, no mention was made of interest and repayment terms.

24. On or about August 31, 2015, more than a month after the original closing date and the Buyers having to live in their car, the transaction was closed with three (3) mortgages registered against the 1A Property, including a Promissory Note in favour of Samra, wherein the Buyers borrowed a total of $49,079.85 ("Promissory Note"), the salient details and terms included:

   i. $47,079.85 was being borrowed from Samra;
   ii. $2,000.00 was being borrowed from "[Samra's] associates - Individual A and Individual B (the "MORTGAGE BROKERS")";
   iii. An annual interest rate of 8%;
   iv. It required the Buyers to repay the loan in full, including interest, after one year; and
   v. In the event that Buyers could not repay the Promissory Note within one year, it would be extended at an annual interest rate of 12%.

25. The Promissory Note meant that after one year, the Buyers would, at the very least, be required to pay Samra a lump sum of approximately $53,006.24.

26. The Buyers originally believed that the loan offer from Samra was to be a no interest loan and was a gesture of goodwill to help them and to ensure that the transaction was closed. Therefore, the Buyers were surprised when they were presented with the terms of the Promissory Note during the closing of the 1A Property transaction.

27. It was only when the Buyers arrived at the law office for the closing, that they found out that the lawyer handling their closing was Individual C, the son of Individual A, the “mortgage broker”. As such, Individual C dealt with the closing of the 1A Property transaction and also prepared the Promissory Note.

28. The Buyers became aware of the onerous terms of the Promissory Note only when they were at the lawyer’s office for the closing of the transaction and noted that Samra was not at the lawyer’s office. The Buyers learned from the lawyer that Samra was providing instructions and information regarding the Promissory Note. At the closing, the Buyers felt compelled to accept the Promissory Note and close the 1A transaction because they feared that if they walked away, they would have lost “everything”.

29. One year after the closing, Samra, through his solicitor, requested the amount due on the Promissory Note from the Buyers, advising that the amount due was $57,442.28. This included $4,936.46 interest, $4,127.75 'penalty', as well as $583.22 legal fees. The Buyers were unable to honour the Promissory Note / the 3rd Mortgage.

30. The Buyers were visited at home by Samra who told them that the monies he loaned them to close the 1A Property belonged to his brother. With the Buyers, not

having the funds, Samra tried to persuade them to sell the 1A Property so that he could recover the monies on the Promissory Note to repay his brother.

31. Unable to honour the Promissory Note and to afford the 1A Property, the Buyers eventually lost the Property through power of sale proceedings.

Witness # 2 – Compliance Officer A

32. Compliance Officer A is a Senior Client Services Specialist with the RECO for 5 plus years.

33. On behalf of RECO, he had investigated whether Individual A was a registered mortgage broker. His investigation confirmed that Individual A was not a registered mortgage broker.

34. Compliance Officer A also identified a suite of documents included/disclosed in RECO's Book of Documents, Exhibit 3, which he personally requested and/or caused to be obtained during his investigation.

35. His findings revealed that the Financial Services Commission of Ontario had refused Individual A's registration to be a mortgage broker.

36. Compliance Officer A concluded that, Individual A was not registered as a mortgage broker.

WITNESS FOR THE RESPONDENT

37. **Jaskarn ("Jazz") Samra**, the Respondent, is a Registrant under the Act. He testified in his own defence and was the only witness for the Respondent.

38. Samra has been licenced with RECO since July 2013. He completed all the required OREA courses through self-study and in-class training.

39. Samra met the Buyers after Samra sold a house in the Buyers' neighbourhood and shared his fliers, advertising his services and the Buyers reached out to him.

40. The Buyers listed their 2B Property with Samra, on or about October 30, 2014, and cancelled it on or about November 11, 2014. Samra was not told that the Buyers were in the process of trying to refinance the said 2B Property. After the cancellation, the 2B Property was re-listed with another agent but Samra was not immediately advised as such, until near the time of closing the sale.

41. Sometime after the cancellation, Samra was contacted by the Buyers who told him that they wanted to purchase a property. They did not enter into a Buyer Representation Agreement but Samra sent the Buyers numerous listings. Samra had discussions with the Buyers and was advised by the Buyers that their budget was $500K to $550K and that Samra should find homes for them in that price range.

42. Out of the listings, the Buyers showed an interested in the 1A Property and caused Samra to draft an offer for the 1A Property. Samra and the Buyers attended the offer presentation. During the offer negotiations, the purchase price was changed after Samra had a conversation with the listing real estate broker and then told the Buyers that "another $20,000.00 would do the job". Samra discussed the *$20,000.00* with the Buyers and they agreed to increase their offer. With the listing broker also advising Samra that the Seller did not want any conditions, Samra discussed the inspection and financing conditions with the Buyers, indicating that removing the conditions would cause them to present a "stronger offer". The Buyers agreed to removing the conditions and initialed the changes to confirm same.

43. Samra was of the opinion that adequate funding was in place to finance the purchase because the Buyers told him that they were pre-approved for a mortgage of $500K to $550K. Samra was contacted by the Buyers before the close of the 2B Property sale and was told that they would have $100,000.00 after the close of the 2B Property transaction. However, after the close of the 2B Property, Samra learned from the Buyers that they had less money than anticipated. Samra accepted what Buyer A told him verbally.

44. Under cross-examination, Samra admitted that he knew that the Buyers had financial difficulties and that he also knew that Buyer A was the subject of a Consumer Proposal.

45. Samra did not know Individual A. Further, Samra did not refer Buyers to any mortgage broker or lawyer.

46. Samra did not introduce Individual A to the Buyers and was never involved in any mortgage or refinance application and never attempted to get financing for the Buyers. Samra never sent any documents to Individual A relating to any mortgage application for the Buyers and Samra did not know which mortgage agent the Buyers were consulting with.

47. The first time Samra met Individual A was on or about the time of closing of the 1A Property. He spoke to Individual A only after the closing of the 1A Property.

48. When questioned about the 2B Property re-financing documents, disclosed in Exhibit 4, Samra's Book of Documents, Samra testified that he received the said documents from Individual A the weekend before the start of the Hearing. He had reached out to Individual A and she gave him a copy and told him that they were sent to her for financing.

49. Samra did not receive any consent from the Buyers to procure the documents from Individual A.

50. Samra knew that Individual B, an associate of Individual A was a mortgage agent and admitted that Individual A was not a mortgage agent.

51. Samra was not present at the lawyer's office during the closing of the transaction when the Promissory Note was drafted. Samra's only input in the drafting of the Promissory Note, was to provide the lawyer, Individual C with the information to be put into the Promissory Note, including the amount, interest rate and repayment terms. Samra also dropped off the loan money at the lawyer's office. The repayment term indicated that there be no monthly payment and the loan was to be repaid after one (1) year.

52. Samra did not disclose to anyone related to the 1A Property transaction, or the matter of the Promissory Note, including the lien on the 1A Property, to the extent that it amounts to an acquisition of interest in the 1A Property.

53. After not receiving payment per the Promissory Note, Samra filed a lawsuit against the Buyers, in an effort to recover the loan monies.

<u>SUBMISSIONS OF THE PARTIES – FACTS NOT IN DIPUTE</u>

54. Both Buyer A and Samra testified that they met each other after Samra sold a house in Buyer A's neighbourhood and Samra shared his fliers in the neighbourhood and Buyer A and his spouse subsequently contacted Samra.

55. The Buyers listed their 2B Property with Samra, on or about October 30, 2014, and cancelled the listing on or about November 11, 2014 (*Page 67 of the Respondent's Book of Documents)*.

56. The Buyers were experiencing financial difficulties, including monies owed to Canada Revenue Agency. These financial difficulties led to liens being registered against the 2B Property and Buyer A becoming the subject of a Consumer Proposal.

57. Samra was aware of the financial difficulties experienced by the Buyers, including the Consumer Proposal. Buyer A also explained that their plan to address their financial difficulties was to sell the 2B Property, which they first tried to do through Samra, to no avail. They subsequently listed the 2B Property with another real estate agent who completed the sale.

58. Samra represented the Buyers in the purchase of the 1A Property and during the course of the negotiations the financing and inspection conditions were removed.

59. Samra loaned the Buyers closing funds towards the purchase of the 1A Property via a Promissory Note and registered a lien against the 1A Property.

60. Individual A's son, Individual C was the Solicitor who represented the Buyers in the purchase of the 1A Property and simultaneously prepared the Promissory Note, with Samra providing the information.

SUBMISSIONS FOR THE REGISTRAR, REBBA 2002

61. The Panel received written submissions from Jonathan Hurter, Counsel for RECO.

62. Buyer A testified that, in an attempt to refinance the 2B Property, Samra introduced him and Buyer B, to Individual A, someone whom they did not know previously and had been told by Samra was a mortgage broker.

63. Samra contended that he did not introduce the Buyers to Individual A. Contrary to Buyer A's testimony, Samra testified that he does not really know Individual A.

64. The evidence introduced by Samra relating to the Buyers' mortgage application(s), which Samra obtained from Individual A the week before the Hearing commenced, supports Buyer A's testimony that Samra knew Individual A.

65. First, there is the email from Buyer B to Individual A on December 14, 2014, wherein Buyer B outlines for Individual A, several their debts (*Respondent's Book of Documents, Dated February 28, 2022, at P.38).*

66. Second, Samra provided a copy of a Mortgage Commitment wherein the Buyers were applying for a second mortgage of $74,400.00 (*Respondent's Book of Documents, Dated February 28, 2022, at P. 67)*.

67. Despite Buyer A testifying that prior to his introduction to Individual A by Samra, that he (Buyer A) did not know Individual A, Samra claimed to having met Individual A on only one occasion and that is after the Buyers had agreed to purchase the 1A Property.

68. RECO suggests that only one of the stories can be true and that Buyer A's story is to be believed over that of Samra.

69. Compliance Officer A, a Senior Client Services Specialist with RECO (“Compliance Officer A”), testified that he had investigated whether Individual A was a registered mortgage broker. He testified that according to his search, one which could be done by any member of the public, Individual A was not a registered mortgage broker.

70. Compliance Officer A testified about how he later came to learn that the Financial Services Commission of Ontario had refused Individual A’s registration to be a mortgage broker.

71. It is concluded that, Individual A was not registered as a mortgage broker.

72. During the attempt to refinance their 2B Property, the Buyers lost touch with Individual A and were unable to complete the transaction. The Buyers listed and sold the 2B Property through a real estate agent, other than Samra. The Buyers, after settling their debts from the proceeds of the 2B sale and leasing another property, reached out to Samra to help them locate a new home. In doing so, the Buyers told Samra that they had only $49,000.00 to put towards the purchase of a new home.

73. Samra told the Buyers that he was ‘working with his associate to give the Buyers a budget’.

74. Again, Samra says this was untrue, and claims that he (Samra) relied on vague representations that the Buyers had been pre-approved for a mortgage.

75. Both Buyer A and Samra agree that Samra then began showing the Buyers potential properties. According to Buyer A, over a course of about three (3) weeks, the Buyers were shown a number of properties by Samra.

76. Eventually, Samra introduced the Buyers to the 1A Property, which had an offer presentation of 7:00 PM on April 24, 2015 ("Offer Presentation") (*Respondent's Book of Documents, Dated January 29, 2022, at P.22 under "Brokerage Remarks")*.

77. Buyer A testified that Samra represented them in making an offer at the Offer Presentation. In doing so, the Panel heard how Samra drafted an offer for Buyer B to purchase the 1A Property from the Seller with the following salient terms ("Offer"):

   a. Purchase Price: $525,000
   b. Deposit: $10,000
   c. Conditional: Financing & Inspection
   d. Completion Date: July 23, 2015

   (RECO's Book of Documents, Dated January 27, 2022, at P. 25).

78. The Offer was rejected by the Seller and that's when, according to Buyer A, Samra said he would make a call to the broker, "a female", to 'bump up the amount they had been approved for'.

79. Samra however, tells a different story. Samra said he went to talk to the listing broker he was told that the Buyers needed to increase the Offer by $20,000.00.

VIOLATION OF *BROWN V. DUNN*

80. In cross-examining Buyer A, at several points, Samra (though counsel) did not confront Buyer A with contradictory evidence. In turn, Buyer A was not given an opportunity to explain his position on this alternative narrative. This, it is submitted, is a breach of the principle enunciated in the 1894 case of *Brown v. Dunn (Brown v. Dunn (1894), 6 R. 67 (H.L.)*.

81. *Brown v. Dunn* stands for the proposition that, if a cross-examiner intends to impeach the credibility of a witness by means of extrinsic evidence, such as that

of the Respondent, that they must give that witness notice of their intention to do so. They must "give him an opportunity of making any explanation" (*Brown v. Dunn (1894), 6 R. 67 (H.L.), at page 70).*

> Doing so helps ensure parties are treated fairly and ensures fairness in the process (*R. v. Werkman, 2007 ABCA 130, 404 A.R. 378, at para 7; R. v. Dexter, 2013 ONCA 744, [2013] O.J. No. 5686, at para 17).*

82. The *Brown v. Dunn Rule* enhances the public's confidence in the justice system and failing to do so prevents the Panel from being able to observe and assess the Complainant when confronted with a contradictory explanation (Refer also to: *R. v. Dexter, 2013 ONCA 744, [2013] O.J. No. 5686, at para 19*).

83. Samra should have put it to Buyer A that he, Samra, did not refer the Buyers to Individual A.

84. Samra should have put this alternative narrative to Buyer A if he was going to present contradictory evidence. Samra should have specifically put it to Buyer A that he, Samra, went out and spoke to the listing broker and not a mortgage broker about 'bumping up the amount they had been approved for', as Buyer A testified (*R. v. Werkman, 2007 ABCA 130, 404 A.R. 378, at para 7).*

85. Samra should have put it to Buyer A that he, Samra, was not involved in the mortgage process and that he heard about it only at the time when the Buyers needed a loan to close the transaction.

86. It is submitted by RECO that Buyer A was certain and outspoken about the unfolding of events. The fact is, RECO submits, that Samra failed to cross-examine Buyer A on this and challenge the veracity of Buyer A's evidence.

87. As the Panel ruled that RECO would not be permitted to recall Buyer A, the remedy at this junction is not that Samra's evidence be excluded, but rather that the failure be weighed against assessing Samra's credibility.

88. The following cases support RECO's submission:

R. v. Quansah, 2015 ONCA 237, 125 O.R. (3d) 81, **at para 119**, application for leave to appeal filed [2016] S.C.C.A. No. 203, File No.: 37013.

Pawlett v. Dominion Protection Services Ltd., 2008 ABCA 369, 440 A.R. 241 **at para 21**.

R. v. Knox, 2017 SKCA 8, **at para 40**.

R. v. Werkman, 2007 ABCA 130, 404 A.R. 378, **at para.10**.

Klemke Mining Corp. v. Shell Canada Ltd., 2007 ABQB 176, 419 A.R. 1, **at para 16-18**.

<u>SUBMISSIONS FOR THE RESPONDENT</u>

89. The Panel received written submissions from Philip Okpala, counsel for Samra.

90. Samra testified that he did not introduce the Buyers. Both the oral and documentary evidence before the Panel shows, that the Buyers were dealing with Individual A long before the purchase of the 1A Property. The evidence suggests that Individual A had been working with the Buyers while Samra was trying to sell their 2B Property, without Samra's knowledge. Essentially, the documentary evidence shows that the Buyers had extensive contact with Ms. Individual A.

91. Samra testified that he only spoke to Individual A occasionally on the phone and only met her in person for the first time, around the time of the closing of the 1A Property.

92. Buyer A also testified that Individual A's son, Individual C, was also their Solicitor at about the same time and represented them in the purchase of the 1A Property.

93. Buyer A got a second mortgage loan commitment for $70,400.00 from Company A that was signed by the lender on November 24, 2014. Neither Buyer A nor his spouse (Buyers) told Samra about this mortgage commitment. When the mortgage commitment was shown to Buyer A during his testimony, while recognizing the document, Buyer A was shocked as to how same was obtained and asked, ' Is it even legal'? (Page 67 of the Respondent's Book of Documents)

94. Samra testified that he got a copy of the Company A mortgage loan commitment from Individual A.

95. The e-mail from Buyer B to Individual A was dated November 14, 2014, (Page 38 of the Respondent's Book of documents), did not look like a first contact e-mail, it appears that the Buyers had been working with Individual A and they had undertaken an appraisal on the property. The e-mail shows Buyer B's concern that the balance owed to the Canada Revenue Agency was more than she anticipated.

96. The Buyers, while working with the Respondent to find a house for them after they sold the 2B Property through another Real Estate Agent, had put in an offer that was accepted to buy another property at 3C Crescent, City B ("3C Property") on April 13, 2015 (Page 26 of the Respondent Book of Documents).

97. The Buyers sent the accepted offer to Individual A to secure a mortgage for the purchase. Buyer A was shocked at the reference to this document and showed

frustration on how the Respondent got the document. The Respondent testified that the Buyers and his wife had been in touch with Individual A all along and sent her a copy of the Agreement of Purchase and Sale (APS) for the above-mentioned 3C Property for Individual A to get a mortgage for them. There is no other reason Individual A would have a copy of this APS.

98. The foregoing evidence shows that the Buyers had a very good relationship with Individual A without Samra's involvement. If the Buyers went through with the purchase of the 3C Property, they would have completed the transaction without Samra's involvement.

99. Buyer A testified that he was dealing with so many different mortgage brokers but he could not even name a single one. A reasonable person will assume that Buyer A would remember the names of the people he dealt with for such an important transaction as in buying and financing a home, just as Buyer A remembers the names of Individual D, Solicitor, Individual A, and the other real estate agents who sold his 2B Property and helped with the offer on the 3C Property.

100. The evidence before the Panel indicates that this was not the Buyers' first time getting a mortgage, and they knew the process very well.

101. Buyer A testified, that he never gave or sent any document to Samra in relation to his financing nor spoke with him about the details of his financing. Samra was never involved in any mortgage application or attempts to get financing for the Buyers.

102. Samra testified that in March 2015, when Buyer A contacted him, Buyer A told him that he will have about $100,000.00 to buy another house from the sale of the 2B Property. He further testified that the Buyers only found out they had only $49,000.00 left after the closing of 2B Property on April 17, 2015. The Buyers

obviously had a similar budget when they tried to purchase the 3C Property, without the knowledge of Samra.

103. It is difficult to reconcile Buyer A's claim that Samra said the Buyers' mortgage would be approved during the offer negotiations for the 1A Property after Buyer A testified that he never gave Samra any documents required to secure a mortgage.

104. Samra testified that in a multiple-offer situation, it is normal for a real estate agent to discuss with the listing broker / realtor representing the sellers to help negotiate a deal. In the instant case, the listing broker suggested increasing the offer price and removing the financing condition. Samra told the Buyers what he thought it might take to have the 'winning offer' and that the Buyers' agreed, and they initialled the changes to the offer. Samra, fully understood what that meant.

105. Buyer A testified that he did not know who Samra spoke with regarding the 'approval' but he believed that Samra spoke with a 'female'. Two questions then arise:

   a. Would the Buyers know that Samra called a 'female' mortgage broker when the call was not made in the presence of the Buyers?

   b. If Samra spoke to Individual A as alleged by Buyer A, would that call not have been more conveniently made by the Buyers themselves, or at least in their presence?

106. Based on Buyer A's testimony, it is unreasonable to believe that Samra went outside to call a mortgage broker to get an approval for the amount the Buyers would need for the improved offer, when the Buyers never gave any documents to Samra regarding their mortgage and Samra was never involved in any mortgage application or attempts to get financing for the Buyers. No mortgage broker would give such approval without reviewing documents.

107. It is inferred that the Buyers had been working with Individual A for the 3C Property offer and she already had all their documents to apply for a mortgage well before they put the offer on the 1A Property.

108. Samra testified that when Buyer A called him on or about August 25th, 2015, regarding closing funds for the 1A Property, Buyer A had tried to borrow funds from family, friends and from ‘back home’ but was not able to get any help from them. Buyer A indicated that he had exhausted all options.

109. It was at that time Samra called Individual A for an update, and Individual A explained the situation to him and Samra and Individual A tried to find solutions to resolve the problems.

110. Samra further testified that after some thought, he came up with the idea of deferring his commissions and giving the Buyers a loan. Samra testified that he spoke to his Broker of Record and received instructions from him on how to proceed. The Buyers’ lawyer drafted the Promissory Note and explained it in full to the Buyers before they agreed and signed it.

111. Documentary evidence shows that the Buyers received second mortgages from private lenders in the past, including second mortgages on their 2B Property, which would indicate that they generally understood what such a loan entailed and knew the process of getting these types of loans. Buyer A also testified that he knew what an ‘encumbrance’ was.

112. Buyer A testified he had dealt with 15 to 20 mortgage brokers. Buyer A testified that he had his 2B Property sold because of his financial troubles; not being able to pay off loans. It is therefore reasonable to conclude, that Buyer A is a reasonably experienced consumer in respect of borrowing and mortgages.

113. The claim that the Buyers lost thirty-nine thousand dollars ($39,000.00) is unsubstantiated. The Buyers did not present their lawyer's Statement of Account for the closing of the 1A Property which would have provided clarification on this claim. It is implausible for this large amount of money to go unaccounted for. However, the Direction re: Funds shown on page 51 of RECO Book of Documents shows that the total amount due to Vendors on closing was $518,340.02, while purchase price as shown on Agreement of Purchase and sale on page 25 of RECO Book of Documents was $545,000.00. This clearly shows, says Samra, that the Buyers did not lose a dime and deposits they made were applied as credit on closing.

114. Buyer A testified that the Buyers plan to repay the loan to Samra after one year was to refinance the property. This is normal in many cases.

RESPONDENT'S CONCLUSION

115. The Respondent argues that Compliance Officer A testified that RECO takes no issues with an assignment of a real estate commission by a real estate agent but that it will require disclosure of same if there were multiple offers to the transaction – which was not the circumstances of the present case. Despite not being required, the Respondent claims that disclosure was made by email to the Complainant.

116. Buyer A testified that he contacted several mortgage agents to get financing and he clearly testified that he did not get Samra involved nor gave him any mortgage documents.

117. Samra testified he loaned his Commission, as well as out-of-pocket funds, to the Buyers to save the transaction.

118. Buyer A testified that he was already having financial difficulties and he, in fact, testified that he had previously made a consumer proposal.

119. The Buyers did not raise any issues with the loan, and they had legal representation by a Solicitor of their choice to close the transaction. However, the Buyers did not have independent legal advice in respect of the loan but relied on the advice of their said Solicitor who was closing the transaction .

120. The Buyers have not started any legal proceedings against their Solicitor or the mortgage brokers Mr. Buyer A testified to have worked with.

121. The Buyers did not do anything regarding repayment of the loan but immediately after they received a letter from counsel for Samra, they filed a complaint against Samra to avoid paying back the money they owe Samra.

122. The Buyers received the funds from Samra to close the 1A Property and they were grateful for same but because they later lost the house via a power of sale, the Buyers filed a complaint against Samra.

123. The Buyers and Samra both testified that the loan remains unpaid.

124. The Buyers only made the RECO complaint years after all the alleged issues took place. After buying the 1A Property in August 2015, they used the services of Samra again to attempt to sell the house in May 2016.

125. Even after deciding not to sell the 1A Property and cancelling the listing, the Complainants did not make a RECO complaint. The complaint was only made after the Respondent sued them in court to recover his money.

126. Regarding Section 32(1) *Real Estate and Business Brokers Act, 2002*:

"A careful review", says the Respondent, "shows the section pertains to an *Agreement* and not specifically an "Agreement of Purchase and Sale only" as canvassed by counsel for RECO. In the instant case, the *Agreement* referred to by *REBBA 2002* is the Promissory Note, not the Agreement of Purchase and Sale – Reference: <u>"Unless the registrant first delivers to all other parties to the *agreement* the notice described in subsection (2) and the other parties have acknowledged in…"</u>

127. As stated above the requirement of disclosure was exhausted pertaining to the Promissory Note which was the *agreement* that granted the Respondent an equitable interest in the Complainant's property in the form of a mortgage."

128. Regarding the issue of violating Brown v. Dunn raised by counsel for RECO, the Respondent claims that the Panel made a ruling regarding same and ruled there was no breach. RECO indicates that the only way the Respondent can revisit the ruling of this Panel, is on appeal.

129. It is the Respondent's position that the Respondent is no way in breach of any of his duties to the Complainant as it relates to the Code and the *REBBA 2002*.

<u>CODE OF ETHICS</u>

130. The Registrant is governed by the *Real Estate and Business Brokers Act, 2002*, S.O. 2002, c.30, Schedule C ("*REBBA 2002*").

131. This Discipline Committee is established to hear and determine these issues, in accordance with the prescribed Regulations. The Discipline Committee must determine if the Registrant has failed to comply with the Code of Ethics established by the Minister in accordance with Section 21 of the *REBBA 2002*.

132. Section 50 of the *REBBA 2002* provides that the Minister may make Regulations establishing a Code of Ethics for the purposes of subsection 21(1).

133. Ontario Regulation 580/05 is the Code of Ethics pursuant to the *REBBA 2002* and is the Code of Ethics that governs these proceedings.

FINDINGS BY THE PANEL

134. Having carefully considered the testimony of the witnesses at the hearing, the documentary evidence and the submissions of the Parties, the Panel has arrived at the following conclusions:

Allegation A:

Did Samra refer the Buyers to Individual A, someone Samra knew, or reasonably should have known, was not registered under MBLAA to deal / trade in mortgages, in furtherance to the Buyers' purchase of the 1A Property, contrary to S. 4, 5, 6(1), 8(1), 38, and/or 39 of the Code of Ethics?

In addition, or in the alternative, did Samra consult with Individual A about the Buyers' financing of the 1A Property in a situation when he knew, or reasonably should have known, Individual A was not registered under MBLAA to deal / trade in mortgages, contrary to section(s) 4, 5, 8(1), 38, and/or 39 of the Code?

135. The Panel has concluded for Allegation A, that there is no breach of section(s) 4, 5, 6(1), 8(1), 38, and/or 39 of the Code of Ethics, as alleged by RECO.

136. Buyer A did not provide any information for a mortgage application to Samra. It was Buyer A's testimony that he did not provide any mortgage information to Samra and he did not otherwise engage Samra in dealing with the mortgage for the 1A Property. In addition, Samra testified that he did not know which mortgage agent the Buyers were working with except that he knew of a Individual B being a mortgage broker.

137. Samra's testimony contradicted Buyer A's testimony regarding Samra's knowledge of Individual A being a mortgage agent and referring the Buyers to Individual A. Buyer A is at a disadvantage because of the contentions regarding Samra referring the Buyers to Individual A and Samra consulting with Individual A about the Buyers' financing of the Property were not raised with Buyer A during cross-examination. While there are some unsubstantiated inferences that Samra and Individual A may have known each other, and the Panel did not get the benefit of any response from Buyer A which would have countered Samra's claims, on balance, such additional testimony was unlikely to overcome Buyer A's previous inconsistencies in this regard.

138. The Panel finds Buyer A's testimony to be contradictory. Buyer A had worked with Individual A previously, in terms of trying to re-finance the 2B Property. At that time, Samra was not involved with Individual A and the Buyers. Buyer A testified that Samra only "kept in touch". Buyer A ought to have had no reason to believe that Samra would be speaking with a mortgage agent or broker on their behalf, for the simple reason that Buyer A did not discuss any mortgage application and/or provide any information regarding commencing and/or completing a mortgage application with Samra, except advising Samra of the mortgage approval amount. The matter of the Promissory Note does not prove that Samra referred the Buyers to Individual A. Samra could have become associated with Individual C through the mutual connection of Individual A, during conversation with Individual A regarding the financial difficulty the Buyers faced with closing the 1A Property transaction.

139. The Panel finds that with the contradictory evidence from both Buyer A and Samra, RECO has not presented any evidence to demonstrate that, on balance, Samra referred the Buyers to Individual A.

140. The Code says that registrants must provide "competent service", but the Panel is not aware of a requirement for registrants to confirm or verify registration status of the mortgage agents/brokers where the registrant has not made the referral. The Panel has determined that for the part of the Allegation that Samra knowingly, or reasonably should have known, that Individual A was not registered under MBLAA to deal/trade in mortgages, RECO has not established the commission of such offence.

Allegation B:

Did Samra fail to adequately inquire with the Buyers about their financial situation in furtherance to the Buyers' purchase of the 1A Property, contrary to section(s) 4, 5, 38, and/or 39 of the Code?

In the alternative, did Samra fail to adequately advise the Buyers on their purchase of the 1A Property in a situation where he knew, or reasonably out to have known, the 1A Property was not suitable given the Buyers' financial situation, contrary to section(s) 4, 5, 6(1), 38, and/or 39 of the Code?

141. The Panel finds that there was no violation of S. 38 of the Code of Ethics, in respect of this Allegation.

142. No evidence was presented for the Panel to consider a finding that the Respondent did not use his best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in real estate.

143. The Panel finds that Samra violated Section 4 of the Code of Ethics because he failed to promote and protect the best interests of the Buyers, causing his clients have a negative financial exposure.

144. Further, the Panel finds that Samra is in violation of Section 5 of the Code of Ethics because he failed to provide conscientious service to the Buyers and did not demonstrate reasonable knowledge, skill, judgment and competence in providing his services.

145. Further, the Panel finds that Samra is in violation of Section 39 of the Code of Ethics because he engaged in an act or omission that, having regard to all of the circumstances, would reasonably be regarded as unprofessional or unbecoming a registrant.

146. Samra did not promote and protect the best interests of his clients. Samra ought to have, and should have, done much more to enquire into the status of the mortgage financing.

147. Samra ought to have put more thought and action into the transaction, especially given his knowledge of the financial history of his clients. A registrant, being a real estate professional ought not to simply do what he/she is told but ought to be proactive and perform the requisite due diligence to put the parties to the transaction into the best possible position. The Panel finds that Samra failed in these respects and as such, did not provide conscientious service to his clients, and further, failed to demonstrate reasonable knowledge, skill, judgement and competence in providing his services.

148. The evidence suggests that Samra was aware of the details of the Buyers' financial situation including the fact that the Buyers had tried to refinance the 2B Property, which did not work out; had entered into a consumer proposal; sold the 2B Property

and paid off all their debts and had $49,000.00 left in hand. Nevertheless, Samra was of the opinion that the Buyers had $100,000.00 in hand, instead.

149. Samra testified that he knew the Buyers sold the 2B Property, under distress/duress.

150. Samra was the one who suggested to the Buyers that it was better to move back into a property to start building equity.

151. Samra's defence is, "They told me that they were approved for "$X" so I looked for a property."

152. While the mitigating factor is that the Buyers did not involve Samra in trying to obtain the mortgage, the aggravating factor is that Samra knew of the financial hardship faced by the Buyers from the outset. Hence, Samra could have and should have delved more into the financing aspect of the transaction. At the very least Samra should have enquired about the status of the financing arrangement.

153. Given his knowledge of the Buyers' financial situation, Samra could have and should have enquired more into the mortgage financing. Samra testified that the Buyers had told him that they obtained a mortgage pre-approval. Samra should have been aware that, a mortgage pre-approval is usually far from a solid lending commitment.

154. The Panel is careful to note that if the mortgage financing was not delayed because of Samra's failure to enquire more into the mortgage financing on behalf of his clients, his clients would have had enough money to close in the first instance and would not have been placed into a worse financial position in the end.

155. Finding a breach of Section 39 requires a determination that Samra engaged in conduct that was disgraceful, dishonourable, unprofessional and/or unbecoming. No case law was submitted by either the Registrar or Samra to assist with determining if a breach of Section 39 of the Code had occurred and the test to be used by this Panel in making such a finding. The Panel's analysis of the wording of Section 39 found that the wording of section 39 establishes a sliding scale of the veracity of the conduct with "disgraceful" being the most egregious, followed by conduct that is "dishonourable", then "unprofessional", with conduct that is "unbecoming" being the least egregious.

156. Promoting and protecting a client's best interests, as well as providing a client with competent and conscientious service, are professional obligations of all registrants, as specifically set out in the Code. As the Panel has found that Samra breached these sections of the Code (S. 4 and S. 5), the Panel therefore must also find that Samra engaged in unprofessional conduct in breach of Section 39, and by extension has also engaged in conduct unbecoming. While Samra's conduct may be characterized as careless or negligent, the Panel could not find any element of intentional misrepresentation or fraud that would elevate Samra's conduct to being either disgraceful or dishonourable.

157. With the aforementioned findings, the Panel does not consider it necessary to deal with the alternative of this allegation.

Allegation C:

Did Samra fail to appropriately advise the Buyers on the significance of the Financing Condition and removing of same, contrary to section(s) 4, 38 and/or 39 of the Code?

158. The Panel did not receive evidence to prove this allegation. As there is no evidence to support this Allegation, the Panel cannot find Samra in violation of Sections 4, 38 and/or 39 of the Code of Ethics.

Allegation D:

Did Samra fail to appropriately advise the Buyers on entering the Agreement, which was unconditional on financing, in a situation when he knew, or reasonably should have known, that no financing had been arranged and/or secured, thereby placing the Buyers in a financially precarious position and causing the Buyers to compensate the Sellers, contrary to section(s) 4, 5, 6(1), 38, and/or 39 of the Code?

159. With respect to this Allegation, and by Samra's own admission that he did not probe the issue of financing, the Panel finds that Samra violated Sections 4, 5 and 6(1) of the Code of Ethics.

160. As a precursor, having failed in Allegation B, where Samra failed to adequately inquire about the Buyers' financial situation, in furtherance of the Buyers' purchase of the 1A Property, the Panel draws a parallel with this Allegation D. The Panel finds that Samra, had no reasonable basis to think that financing had been arranged and/or secured. As well, he should have known that a mortgage pre-approval is often not final. Even though Samra was told that the Buyers were pre-approved for mortgage financing, Samra should have inquired more into what that meant. Financing of the purchase should have been a priority for Samra, especially because he knew from the start that his clients' financial position was not solid, even if the Buyers told him that they were 'pre-approved'.

161. Even if Samra was not aware of which mortgage personnel the Buyers were working with to secure the mortgage, the very least Samra could have done was

to enquire about the status of the mortgage pre-approval, to protect the integrity of the transaction.

162. Further, the Panel finds that with Samra's knowledge of the Buyers' weak financial position, Samra should have ensured that the Buyers were in a financial position to close the transaction. At all material times, Samra had access to the Buyers and could have made any and all enquiries. The natural consequence of Samra failing to make appropriate enquiry, is that he was unable to appropriately advise the Buyers. Samra's failures with the foregoing, demonstrates his lack of reasonable knowledge, skill, judgement and competence in providing opinions, advice or information regarding the transaction/Agreement, specifically the lack of financing and not being able to close the transaction - and the possible serious effects on the parties to the transaction.

163. On the basis of the constellation of facts and evidence, the Panel finds that Samra did not do enough to promote and protect the best interests of the Buyers and as such, placed them into an Agreement which put them into a financially disadvantaged position, which eventually caused them to suffer financial loss.

164. This leads to the conclusion that Samra failed to provide conscientious service to the Buyers and also, that Samra did not demonstrate reasonable knowledge, skill, judgement, and competence in providing his services.

165. The Panel cannot find Samra in violation of Section 38 of the Code of Ethics. The Panel has concluded that, while Samra did not use his best efforts, his inaction and lack of effort did not stem from a misrepresentation, fraud, or any unethical practice in respect of the transaction.

166. However, Samra's inaction and failure to use best efforts to protect his client's interest does constitute unprofessional and unbecoming conduct, in violation of Section 39 of the Code. The Panel cannot find disgraceful or dishonourable conduct, as the Panel has not observed any effort nor any evidence to cover up

any mistakes by lying which would demonstrate that Samra was not trustworthy, regarding the instant transaction with his clients.

Allegation E:

Did Samra inform or otherwise permit communication of the fact that the Buyers had been approved for $545,000.00 in mortgage financing when Samra knew, or reasonably should have known, this was not true, contrary to section(s) 4, 5, 6(1), 37(1), 38, and / or 39 of the Code?

167. The evidence before the Panel does not prove on a balance of probabilities that Samra was in violation of Section(s) 4, 5, 6(1), 37(1), 38, and/or 39 of the Code for this Allegation.

168. It has not been proven that Samra was in communication with Individual A, who was assisting the Buyers with the mortgage. The evidence suggests that the Buyers did not involve Samra in the mortgage application process and therefore there is no indication that Samra was communicating with Individual A. As a result, there is insufficient evidence to suggest that Samra had knowledge of an approval for $545,000.00.

169. The Panel cannot find, on a balance of probability, that Samra informed or otherwise permitted for the communication of the fact that the Buyers had been approved for $545,000.00 in mortgage financing.

<u>Allegation F:</u>

Did Samra fail to deliver a written notice to all the parties to the Agreement, and/or fail to obtain written acknowledgements from all the parties of having received said notice, prior to acquiring for himself an interest in real estate and that he was doing so, contrary to section(s) 3, 5, 38 and / or 39 of the Code?

170. The Panel finds that the evidence and the governing statute, S. 32 of the *Real Estate and Business Brokers Act*, 2002 (*REBBA, 2002*), did not trigger any violations of Section 3, 5, 38 and/or 39 of the Code of Ethics.

171. There was no evidence of any deliberate scheme by Samra to acquire for himself, an interest in real estate without disclosing to the Buyers and the Seller. The Panel is of the view that while the Promissory Note is an agreement, and a lien would have been registered on the 1A Property to secure the loaned monies, the intent at the heart of the Promissory Note is to assist the closing of the transaction by providing closing funds and not to “acquire an interest in real estate”. The lien on the 1A Property is a corollary of providing a loan and to minimize or neutralize the financial risk involved.

172. The Panel is also mindful that S. 32 of *REBBA, 2002*, does not define “agreement” and leaves it open to interpretation. Generally speaking, “agreement” in real estate transactions as it relates to acquiring an interest in real estate, mainly refers to an agreement of purchase and sale (APS) or a lease. The Panel therefore contemplates that Samra was under no obligation to deliver a written notice to all the parties as Samra was not a party to an APS or lease. The Promissory Note is not an agreement, as interpreted in S. 32 of *REBBA, 2002*. Furthermore, even if the Promissory Note was an agreement under section 32 of *REBBA, 2002*, only the parties to the Promissory Note would have required the notice required by that section, and all such parties were aware of all information requiring disclosure.

173. On the basis of this allegation and the evidence presented, The Panel finds that the Promissory Note:

    i. Did not bring into question Samra's treatment of the parties to the subject transaction (i.e. fairly, honestly, and with integrity)
    ii. Did not give rise to Samra not promoting and protecting the best interests of the Buyers.
    iii. Did not give rise to Samra not using his best efforts to prevent error, misrepresentation, fraud, or any unethical practice in respect of a trade in real estate.
    iv. Did not give rise to Samra engaging in any act or omission that, having regard to all of the circumstances, would reasonable be regarded as disgraceful, dishonourable, unprofessional, or unbecoming a registrant.

Allegation G:

Did Samra indicate to the Buyers that the Promissory Note was to be a no-interest loan, only to then charge them interest at a rate of 8%, contrary to Section(s) 3, 4, 5, 38, and/or 39 of the Code?

174. The Panel finds that there is no evidence to substantiate any violation of Section(s) 3, 4, 5, 38, and/or 39 of the Code.

175. The is no evidence to indicate that Samra discussed a Promissory Note at any time prior to when it was discovered that the transaction could not close. At that time, it amounted to a "soft discussion" as nothing regarding interest rate, term, or repayment was discussed. The soft discussion was only about providing closing funds to the Buyers. At best, neither Samra nor the Buyers discussed the terms of the Promissory Note, but insufficient evidence was presented by either party to substantiate a violation of the Code.

<u>Allegation H:</u> Did Samra facilitate the Promissory Note, contrary to section(s) 3, 4, 38 and/or 39 of the Code?

176. The Panel concludes that Samra has not violated Sections 3, 4, 38 and/or 39 of the Code, in respect of this allegation.

177. By virtue of Samra offering to loan the Buyers the closing funds, Samra caused the Promissory note to be prepared by a lawyer. The Panel is careful to note that Individual C is the said lawyer who handled the closing of the transaction for the Buyers. The evidence is clear that the Promissory Note was drafted with the assistance of Samra. Samra being the owner of the funds, would have provided Individual C with all the information, including the loan amount, interest rate, and repayment period that were inserted in the Promissory Note.

178. Generally speaking, there is nothing wrong with facilitating a promissory note. The Panel, however, is of the opinion that in order to provide transparency to the transaction, Samra should have used a lawyer who is independent of the subject real estate transaction.

179. The Panel has not received enough evidence surrounding the Promissory Note to find that Samra acted unfairly, dishonestly, and without integrity. Further, there is not enough to find that facilitating the Promissory Note caused Samra not to promote and protect the best interests of the Buyers.

180. Taking the totality of the circumstances surrounding the facilitation of the Promissory Note, the Panel cannot rule that any issues of error, misrepresentation, fraud, or any unethical practice occurred. Further, no act or omission was proven which would reasonably be regarded as disgraceful, dishonourable, unprofessional, or unbecoming a registrant.

181. Lacking the evidence to support the allegation, the Panel is unable to find Samra in breach of Sections 3, 4, 38 and/or 39 of the Code.

<u>Allegation I:</u> Did Samra charge or otherwise attempted to collect the Additional Amounts, contrary to section(s) 35 and/or 39 of the Code?

182. The lack of evidence to prove this allegation has caused the Panel to conclude that Samra did not charge or otherwise attempted to collect additional amounts.

183. Regarding the allegation, no element of financial irresponsibility in the conduct of business on the part of Samra was conclusively presented. Further, there was not enough evidence to lead to a conclusion that Samra engaged 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.

184. This Panel finds that this allegation has not been proven, hence, the Panel concludes that there is no violation of Sections 35 and/or 39 of the Code on the part of Samra.

185. In summary, the Panel finds the Respondent in violation of sections 4, 5, 6(1) and 39 of the Code of Ethics, as follows:

1. Allegation A – No violation.
2. Allegation B – Violation of Sections 4, 5 and 39.
3. Allegation C – No violation.
4. Allegation D – Violation of Sections 4, 5, 6(1) and 39.
5. Allegation E – No violation.
6. Allegation F – No violation.
7. Allegation G - No violation.
8. Allegation H - No violation.
9. Allegation I - No violation.

PENALTY

Counsel for the Registrar, *REBBA, 2002* to deliver written submissions to the Panel and to the Respondent on the issue of penalty and costs within 15 days of the date on which the Panel's decision and reasons are delivered.

The Respondent shall deliver to the Panel and to Counsel for the Registrar, *REBBA 2002* its written submissions on penalty and costs in response to Counsel for the Registrar, *REBBA 2002*'s submissions within 15 days of the date on which Counsel for the Registrar, *REBBA 2002's* submissions on penalty and costs are delivered to the Respondent.

Counsel for the Registrar, *REBBA 2002* shall deliver to the Panel and to the Respondent its reply to the written submission on penalty and costs of the Respondent within five (5) days of the date on which the Respondent's submissions on penalty and costs are delivered to Counsel for the Registrar, *REBBA 2002*.

Any inquiries relating to the delivery of the above-mentioned documents should be directed to the Manager, Discipline and Appeals Hearings.

[Released: November 3, 2023]