RECO

Pursuing trust in every transaction

File #2018080056

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-

GURPAL SINGH HAYER

PENALTY DECISION AND REASONS FOR DECISION

ORDER:	Payment by Gurpal Singh Hayer of a fine of $30,000.00 to RECO, payable within 180 days of this Decision being released; and Successful completion, at their own expense, of the Real Estate Institute of Canada (REIC) course "REIC 2600, Ethics in Business Practice" and provide RECO with confirmation of successful completion of this course within 365 days of this Decision being released to the parties.
WRITTEN REASONS:	*attached*

Discipline Committee Panel:

Mary Di Felice, Chairperson

Mary Popat, Panel Member

Kayla Stephenson, Panel Member

REASONS FOR DECISION
PENALTY & COSTS

INTRODUCTION

In the matter of Case #2018080056, Real Estate Council of Ontario ("RECO") and Gurpal Singh Hayer, registered as Paul Hayer (hereinafter "Hayer"), the Panel met by videoconference on September 11, 2026 to review the written Submissions of the parties on penalty and costs. Submissions were received from RECO's counsel. Hayer did not provide any Submissions.

In its Reasons for Decision on Findings the Panel outlined Hayer's actions and his breaches of the Code of Ethics. RECO's Submissions which were considered by the Panel in determining appropriate penalty also included a review of the Panel's Findings.

The Panel, in its deliberations on penalty, reviewed and considered, the Decision of the RECO Appeals Committee in *Registrar v. Suzette Thompson* (May 31, 2012) ("Thompson case"). The Panel considered the nine principles cited in the *Thompson case* which provide a framework within which penalty is to be assessed. The Panel confirms that the guiding principles in *Thompson* are not exhaustive and each case is unique. In determining the appropriate penalty, the Panel has considered both the factors set out in the Thompson case and the unique circumstances of this case.

In the *Thompson* case, the following non-exhaustive factors were established as being relevant for guiding the Panel in determining an appropriate penalty for breaches of the Code of Ethics:

1. the nature and gravity of the breaches of the Code of Ethics;
2. the role of the offending member in the breaches;
3. whether the offending member suffered or gained because of the breaches;
4. the impact of the breaches on the complainant or others;
5. the need for there to be specific deterrence to protect the public;
6. the need for there to be general deterrence to protect the public;
7. the need to maintain the public's confidence in the integrity of the profession;

8. the degree to which the breaches are regarded as being outside the range of acceptable conduct; and
9. the range of sanctions in similar cases.

The Panel will address each of these factors below and apply them to the particular facts and circumstances in this case:

1. NATURE AND GRAVITY OF THE BREACHES

It is the Prosecution's position that Hayer's actions are at the serious end of the spectrum of breaches of the Code of Ethics. In the Reasons for Decision dated May 22, 2026, this Panel conducted a thorough analysis of testimony and documents, and the Panel concurs with the Prosecution that the breaches committed by Hayer were significant and fall toward the serious end of the spectrum of unacceptable conduct.

2. ROLE OF THE OFFENDING MEMBER IN THE BREACHES

Hayer was responsible for the events in this matter and his role in the breaches of the Code of Ethics was central. Hayer collaborated with another Registrant, Representative A ("Representative A"), in this transaction but Hayer is responsible for his own actions and had a key role in the breaches. The Panel also accepts the Prosecution's submission that Hayer's misconduct was deliberate and intentional.

3. WHETHER THE OFFENDING MEMBER SUFFERED OR GAINED AS A RESULT OF THE BREACHES

In this matter, Hayer was to be paid a commission. He did not gain anything because the transaction did not close. However, Hayer sought to gain a financial advantage and he represented both the seller and the buyer in this transaction.

4. IMPACT OF THE BREACHES ON THE COMPLAINANT AND OTHERS

Because of Hayer's actions the transaction did not close, causing hardship for the seller and the buyer. As a result of Hayer's conduct, the seller had to invest the time and expense to take legal action against the buyer (the Complainant) as a result of the transaction not being completed and this resulted in a significant civil Judgment against the buyer Complainant.

5. NEED FOR SPECIFIC DETERRENCE TO PROTECT MEMBERS OF THE PUBLIC

The Penalty must provide a message to Hayer that his actions are not acceptable. The penalty must unequivocally indicate to Hayer that his conduct is not to be repeated. There was no testimony at the Hearing, and no Submissions made by Hayer, acknowledging or accepting responsibility for his actions. As such, the Panel cannot be satisfied that Hayer understands and acknowledges his wrongdoing. This was a very important factor taken into consideration by the Panel when assessing the appropriate penalty.

6. NEED FOR GENERAL DETERRENCE TO PROTECT MEMBERS OF THE PUBLIC

The penalty in this case must send a clear message that every Registrant is responsible for compliance with the Code of Ethics and the penalty imposed should deter other real estate professionals from engaging in similar conduct.

7. THE NEED TO MAINTAIN THE PUBLIC'S CONFIDENCE IN THE INTEGRITY OF THE PROFESSION

With an appropriate penalty, the public will feel that their concerns about ensuring that the profession is properly monitored and regulated have been heard and dealt with. The collective reputation of the profession is a primary consideration in assessing penalty.

The public needs to have confidence in the integrity of the profession and needs assurance that there are consequences for the actions of those who do not conduct themselves in accordance with the Code of Ethics.

8. DEGREE TO WHICH THE BREACHES ARE REGARDED AS BEING OUTSIDE THE ACCEPTABLE RANGE OF CONDUCT

This factor is similar to the first factor referenced above and the Panel agrees with the Prosecution that the conduct of Hayer falls far outside the acceptable range. The Complaint against Hayer is serious. Hayer withheld crucial information from the Complainant and he involved the Complainant in a transaction that he knew or should have known was beyond her financial capability. His actions were intentional. He completely failed to protect his client's interests.

9. RANGE OF SANCTION IN SIMILAR CASES

It is RECO's position that Hayer's misconduct is significant and a significant penalty is therefore warranted. The only case submitted by the Prosecution for consideration by the Panel was the case of the Registrant who acted in concert with Hayer in this transaction, Representative A . In an Agreed Statement of Facts and Penalty signed in 2020, Representative A, admitted misconduct and agreed to a penalty of $20,000.00 for his role in this transaction. Representative A accepted responsibility for his actions and he provided testimony at the Hearing about Hayer's actions. The Prosecution submits that the penalty for Hayer should exceed that of Representative A since there was a mitigating factor in Representative A's favour being that he took responsibility for his actions early on and entered into an Agreed Statement of Fact and Penalty. The Panel accepts this submission. Hayer provided no Submissions on Penalty and there are no mitigating factors affecting the penalty relating to Hayer.

PENALTY

The Panel is mindful that the Real Estate and Business Brokers Act, 2002 and associated regulations are designed to protect the integrity of real estate transactions in Ontario and as such weighs in on protecting the public, clients and Registrants alike.

The Panel has unanimously concluded that the following penalty is appropriate:

(i) An order for a fine of $30,000.00 payable within 180 days of the Penalty Decision of the Panel; and

(ii) An order for successful completion of the Real Estate Institute of Canada ("REIC") course number 2600: "Ethics of Business Practice" and within 180 days of the Penalty Decision of the Panel with Hayer directed to notify the Hearings Manager when the course is completed.

Costs were not sought by any party in this matter and therefore no costs are awarded.

Released: October 8, 2026

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IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO THE *REAL ESTATE AND BUSINESS BROKERS ACT, 2002*, S.O. 2002, c. 30, Sch. C

BETWEEN:

REAL ESTATE COUNCIL OF ONTARIO

- AND-

GURPAL SINGH HAYER

DISCIPLINE DECISION AND REASONS FOR DECISION

APPEARANCES:

For the Registrant:	Unrepresented
For the Real Estate Council of Ontario:	Shane Smith, counsel
Heard in Toronto:	February 3, 2026

FINDINGS:	Found in violation of Sections 3, 4, 5, 6(1), 21, 23, 37(1), 38 and 39 of the Code of Ethics.
ORDER:	Counsel for the Registrar, REBBA 2002, is 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.
COSTS:	If appropriate, submissions to be made on costs and expenses with submissions on penalty.
WRITTEN REASONS:	*attached*

_____
Mary Di Felice, Chairperson

_____
Mary Popat, Panel Member

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Kayla Stephenson, Panel Member

REASONS FOR DECISION

INTRODUCTION

This Hearing took place on February 3, 2026, The Respondent, Gurpal Singh Hayer ("Hayer or the "Respondent"), attended the Hearing. Shane Smith appeared as counsel for the Real Estate Council of Ontario ("RECO").

The Discipline Panel was comprised of Mary Di Felice, Mary Popat and Kayla Stephenson. Nicolette Holovaci attended as independent legal counsel to the Discipline Panel.

ALLEGATIONS BY THE REGISTRAR, REBBA 2002

In its Allegation Statement the Registrar, *REBBA 2002* alleged that Gurpal Hayer acted unprofessionally when:

A. Hayer did not disclose and/or withheld the true facts relating to the listing of property located at 1 A Street, City A, Ontario (the "Property"), including that the Property was listed on MLS and had a list price of $390,000, contrary to sections 3, 4, 5, 21, 37(1), and 38 of the Code of Ethics.

B. Hayer encouraged his client, Buyer A (the "Buyer") to put forth an offer that was greater than the Buyer had indicated she could afford and did so without proposing any conditions to protect her interests in relation to the possibility that she would be unable to finance the purchase, contrary to sections 3, 4, 5, 6(1) and 38 of the Code of Ethics.

C. Hayer promised to secure financing for the Buyer client to allow her to purchase the Property at the price he had suggested she offer, and then failed to keep that promise, contrary to sections 3, 4, 5, and 38 of the Code of Ethics.

D. Hayer made efforts to manipulate the true state of the Buyer's financial situation in pursuit of financing, contrary to sections 3, 4, 37(1), and 38 of the Code of Ethics.

E. Hayer pursued extensions for the closing date for the Property of his own volition and then sought the agreement of the Buyer, thus failing to seek proper instructions in her best interests, contrary to sections 3, 4, 5, 23, and 38 of the Code of Ethics.

F. Hayer failed to keep the Buyer informed of his actions and steps on her behalf, including failing to provide her with a copy of the Agreement of Purchase and Sale ("APS"), contrary to sections 3, 4, 5, and 23 of the Code of Ethics.

G. Hayer engaged in disgraceful, dishonourable, unprofessional and/or unbecoming conduct in violation of Section 39 of the Code of Ethics due to her actions set out in paragraphs 26 to 31 above.

The Registrar, *REBBA 2002* alleged that Gurpal Hayer breached the following sections of the Code of Ethics:

Fairness, honest, etc.

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

Best interests

4. A registrant shall promote and protect the best interests of the registrant's client.

Conscientious and competent service, etc.

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

Providing opinions, etc.

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

Material facts

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

Steps taken by registrant

23. A registrant shall inform a client of all significant steps that the registrant takes in the course of representing the client.

Inaccurate representations

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

(2) A registrant shall not knowingly make an inaccurate representation about services provided by the registrant.

Error, misrepresentation, fraud, etc.

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

Unprofessional conduct, etc.

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

EVIDENCE OF THE PARTIES - EXHIBITS

1. Allegation Statement dated June 17, 2022
2. Notice of Hearing dated December 10, 2025
3. RECO Book of Documents dated May 12, 2025

OPENING PROSECUTION

The Property was listed for sale (the "Listing") on March 20, 2017, by representatives, Hayer and Representative A ("Representative A ") and they both worked as a team on the Listing. They represented the Buyer as well as the sellers in this transaction.

This proceeding concerns allegations arising from the attempted purchase of the Property by the Buyer. In 2020, Representative A resolved the allegations against him relating to the Property by entering into an Agreed Statement of Facts and Penalty ("ASFP") and as such allegations relating to Representative A will not be dealt with in this Hearing.

The Allegation Statement lays out alleged breaches of the Code of Ethics by Hayer. The Prosecution suggested that the three main alleged breaches of the Code of Ethics are:

1. Hayer did not disclose to the Buyer that the Property was listed on the Multiple Listing Service ("MLS") or that the listed price was $390,000 and instead represented to the Buyer the transaction as a private sale.
2. Despite being advised that the Buyer's financial limit was approximately $450,000, Hayer encouraged the Buyer to submit an unconditional offer in the amount of $499,000 (the "Offer") and further represented to the Buyer that financing could be arranged.
3. When financing difficulties arose, steps were taken to obtain additional financing and extend the closing date. RECO alleges that these actions included efforts to temporarily increase the apparent funds available in the Buyer`s bank account and obtaining extensions without proper instructions from the Buyer.

RECO submitted that the evidence which would be tendered demonstrated that Hayer prioritized completion of the transaction over the interests of his client, the Buyer.

OPENING -DEFENCE

Hayer elected to wait until after the Prosecution's case to make an Opening Statement.

WITNESSES FOR THE REGISTRAR, REBBA 2002

FIRST WITNESS – Buyer A - THE BUYER

The Buyer confirmed that she filed a complaint with RECO on August 9, 2018 (Tab 2 page 13-16, Exhibit 3) against Hayer and Representative A (the "Complaint") because she was served with a Statement of Claim in July 2018 as she was unable to close the purchase transaction for the Property. Through the Statement of Claim she came to know that she was being sued for damages. When she realized what was going on, she wanted everyone to know the truth about the matter.

The Buyer first met Hayer when she saw a 'for sale' sign on a property. She contacted him and was told that that property was sold but that he would look for another property for her. It is her recollection that Hayer contacted her and showed her the first house.

Hayer got her details and started to e-mail listings to her. She said she told Hayer that she could not go more than $450,000.00 in terms of the purchase price for a property.

Contrary to what she had told him, Hayer started sending her higher priced properties and she reminded him that she was not interested in any property that was more than $450,000.00. Hayer sent an e-mail to the Buyer on January 19, 2017, confirming that she had registered to receive listing information for properties in the $320,000-$420,000 range (Exhibit 3, page 19).

On March 20, 2017, Hayer called her about the property, and she went to look at it that afternoon. There was no discussion at all about price or proceeding to an offer during the first visit to the Property.

She called her uncle to tell him about the Property because it suited her needs, and she went back that evening with her uncle and her father to take another look. Both Hayer and Representative A were present.

During the second visit, her uncle gave the go-ahead to proceed to an offer. They all went to Tim Hortons near the Property to sign the Offer. At that meeting, the Buyer's uncle, who was more experienced with the home-buying process, repeatedly asked Hayer and Representative A what the list price was and asked for a copy of the Listing for the Property. They assured him that there was no Listing for the Property.

Hayer and Representative A told the Buyer that the price for the Property was $499,000 and that they did not want to put the Property on the market because if they did, it would sell for $560,000 to $600,000. They told her prices were going higher and the Buyer would not be able to get the Property, and it would be difficult for her to buy property in the future.

Once again, she told them that she only had a 5% downpayment and could not go over her $450,000 limit and she told them that she had concerns about how she could manage $499,000. She told them that this was her position because she had had multiple experiences and did not want to have any more trouble.

Representative A and Hayer advised the Buyer that the sellers would only agree to sell the Property at $499,000.

Representative A and Hayer brought the Offer with them to their meeting at Tim Hortons with the Buyer and her uncle. The Offer was prepared with the price already inserted. Hayer and Representative A convinced the Buyer to sign the Offer and promised that they would look after everything for her, including the mortgage and the lawyer, as they told her that it was their responsibility to get her mortgage approved because it was beyond her capacity. The Buyer testified that the Offer was made and accepted and Hayer and Representative A arranged the mortgage broker.

The Prosecution asked the Buyer about conversations she had with Hayer and Representative A at that time about options for having the Offer conditional on her obtaining the financing that she was concerned about, and she responded that there were no such discussions.

Referring to the APS, (Tab 2, page 113, Exhibit 3), the Buyer noted that some parts of the APS are typed, and some handwritten.

The Buyer testified that at the time of signing the Offer she did not know what was written or signed by her. After she filed the Complaint, she came to know facts during the RECO investigation, including that each person signing an APS should have a copy of what was signed but Hayer and Representative A never gave her a copy of the Offer that she had signed or any other documents having to do with the purchase.

When she read the Statement of Claim she came to know the truth, that when she made the Offer, the Property had been listed on the MLS and that the list price for the home was $390,000, (Tab 2, page 77, Exhibit 3) and that Hayer and Representative A were also representing the sellers on the Listing.

The Buyer testified that receiving the Statement of Claim caused her significant distress. She realized that she could not defend the Statement of Claim because she did not have any documents. She called the real estate lawyer that Hayer and Representative A had referred her to, to ask for the documents and arranged to attend the lawyer's office the next day to pick up the documents.

The copy of the APS that the Buyer included in the Complaint was obtained from the real estate lawyer after the Statement of Claim had been served upon her.

The Buyer first looked for Legal Aid to help defend the lawsuit, but she was not eligible and had to hire a lawyer herself, which she did on August 1, 2018. She filed the Complaint because she is not at fault and what was outlined in the Statement of Claim was not true. Up until that point, the Buyer had no idea what had happened. The Buyer testified that no one had been in contact with her to advise that the closing had not happened. She only came to know the facts after she received the Statement of Claim.

The Buyer's major concern before and after signing the Offer was getting the mortgage as the closing date was set for June 10, 2017. (Page 113 of Exhibit 3). The Buyer confirmed that Hayer and Representative A had put her in contact with a mortgage broker and she and her uncle visited the mortgage broker in late March or early April.

She said she told the mortgage broker that she wanted to start the process right away because she did not wait until the last day. The mortgage broker told her he would start the process in two to three weeks, closer to the closing date. The Buyer said that she was not familiar with the process and did not want to wait.

As the closing date got closer, Hayer and Representative A told the Buyer that they now needed a 20% downpayment. She asked them how she could give 20% when she had already told them that she only had 5% for the downpayment.

Her uncle was unhappy that Hayer and Representative A were not honoring their promise that they would arrange the financing and he asked that they end the transaction because the Buyer did not have the money to add to her downpayment and Hayer and Representative A told the Buyer that they would arrange the extra down payment and had to extend the closing.

Hayer texted the Buyer to meet at the bank and not to be late (Exhibit 3, page 105). The Buyer met Representative A at the bank, and he asked her to sign into her account. He deposited a draft into her bank account. After printing a statement showing that the funds were in the Buyer's account, the funds that had been deposited were withdrawn.

The Buyer said she asked Representative A why he was depositing this large sum of money into her account, and he told her not to worry that he was depositing the money and would withdraw it at the same time. She did not fully understand the purpose of this deposit and withdrawal. A copy of the bank draft dated July 20, 2017, in the amount of $85,000 that was deposited into the Buyer's bank account, is at page 274 of Exhibit 3.

The Buyer testified that she understands that Hayer and Representative A asked for multiple extensions on the transaction as they were unable to get the mortgage and needed more time. She and her uncle told Hayer and Representative A that they did not want any further extensions because they were not able to get the financing, and they were only creating trouble for her. The Buyer testified that she does not know why they did this to her.

Representative A went to the Buyer's workplace and asked her to sign an extension. He promised her, not to worry, that everything would be fine. She received one further extension request, sent by e-mail from the real estate lawyer asking her to sign it otherwise the seller would take action against her. The Buyer testified that Hayer and Representative A put the real estate lawyer on the frontline and cut off all contact with her.

Ultimately, the Buyer testified that communication with Hayer and Representative A ceased after financing could not be obtained. She said she was only in contact with the real estate lawyer, who could only provide the sellers' lawyer's information to her.

The Buyer was shown Hayer and Representative A's joint response to the Complaint dated September 14, 2018 (Tab 3, page 129, Exhibit 3).

In their response, Hayer and Representative A made several statements such as that they had given the Buyer a copy of the Listing when they showed her the Property and that they also provided her with copies of comparable sales that they had also shown the sellers when they listed the Property. The Buyer was asked to comment on this.

The Buyer replied Hayer and Representative A did give her comparable sales in the $560,000 range but they did not give her the Listing for the Property.

In their response to the Complaint, Hayer and Representative A also stated that the Buyer wanted to submit an offer without conditions. The Buyer testified that that was not true and it made no sense. She pointed to her evidence that she had told them many times and sent them e-mails about her monetary purchasing limit.

Hayer and Representative A further stated in their joint response to the Complaint that they had explained to the Buyer the risks of going in with a firm offer and they suggested that the Buyer demanded that they go in with a firm offer. The Buyer testified that these were all false statements and there were no texts or e-mails establishing that she had said these things to them.

In their joint response to the Complaint, Hayer and Representative A also stated that the Buyer was given copies of all documents that she signed. The Buyer denied this.

She questioned how they had provided the documents to her as they did not send her any documents.

With Hayer and Representative A cutting off all communication, the Buyer confirmed that her only contact was the real estate lawyer who told her that the sellers were seeking damages from her for not closing the transaction. The Buyer said she hired a lawyer to file her Statement of Defense, but a judgment was issued against her in January 2019.

In their response to the Complaint, Hayer and Representative A stated that the reason the Buyer's mortgage was declined at the last minute was because the lender had detected a fraud the Buyer had committed in the past with RBC (Royal Bank of Canada). According to Hayer and Representative A, when the Buyer told them about the fraud, they tried to help but it required a higher deposit. The Buyer testified that that was not true. She said she had advised Hayer and Representative A not to go to RBC because there had been an issue with RBC in the past that was not her fault.

CROSS EXAMINATION OF PROSECUTION WITNESS #1 -THE BUYER

Hayer declined to cross-examine the Buyer.

PANEL QUESTIONS – WITNESS #1 – THE BUYER

The Panel questioned the Buyer as to why she had allowed access to her bank account. She responded that it was because they told her they were arranging the mortgage for her.

When Hayer and Representative A told her that she needed a 20% downpayment, the Buyer said she told them she did not have the money and had nowhere to get the funds and she said they told her that they would arrange it and put the money in her account. The Buyer said that they had told her they were putting money in her account because they wanted to show the 20% down payment in her account.

The Panel asked if the Buyer knew why the mortgage was declined for this transaction. She replied that she knew they had been to different banks. She said she knew that the

first bank declined the mortgage, as did the second bank and Hayer and Representative A then went to RBC.

When asked by the Panel which real estate agent was representing her, the Buyer replied that both Hayer and Representative A represented her.

Knowing her limit was $450,000.00, the Panel asked the Buyer why she had agreed to a purchase price of $499,000. She responded that Hayer and Representative A had told her and her uncle that they would arrange everything, which she understood to be the mortgage and any other expenses. She said that Hayer and Representative A told her that they would pay for everything. She said that she did not pay any fees to the mortgage lender or the real estate lawyer.

WITNESS #2 – Representative A

Representative A testified that at the time of the subject transaction, both he and Hayer worked as a team. Duties and responsibilities were split between the two and they would split the commission on transactions that they were involved in.

Representative A confirmed that he and Hayer both represented the sellers and the Buyer for the sale of the Property.

Representative A acknowledged that in 2019, RECO issued an Allegation Statement alleging several breaches of the Code of Ethics in relation to the transaction involving the Buyer. Representative A entered an ASFP to resolve the case (Tab 13, Page 283, Exhibit 3) whereunder Representative A agreed to certain facts being true and paid a penalty for his role in the transaction.

The Prosecution asked Representative A if he had any dispute with the factual accuracy of what he had agreed to in the ASFP. Representative A responded that he did not.

The ASFP stated that on March 20, 2017, Hayer had contacted the Buyer about seeing the Property.

The Buyer, accompanied by her father and uncle, did see the Property with Representative A and Hayer but he didn't remember much because it was so long ago. He stated that if these facts were written at the time in the ASFP, that it should be true.

In the ASFP, Representative A agreed that Hayer had presented the Buyer with the Offer that had been prepared on her behalf, with an offer price of $499,000. Representative A testified that he was going to go by the written evidence in the Book of documents (Exhibit 3) as it had been too long and he could not recall.

In the Buyer's efforts to get mortgage financing, she testified that Representative A deposited $85,000.00 into her bank account and withdrew it the same day, to show that there were funds in her account to cover a 20% downpayment. Representative A testified that he did not have any reason to doubt the Buyer or anyone, or anything about this transaction but he said that he is honest that he does not remember and does not understand why he was summoned in this matter because the case was closed, and he paid the fine.

The Prosecution confirmed with Representative A that he did not have an independent recollection of the events regarding this transaction.

CROSS-EXAMINATION OF WITNESS #2 – Representative A

Hayer declined to cross-examine this witness.

PANEL QUESTIONS

The Panel had no questions for this witness.

DEFENCE CASE

DEFENCE OPENING

Hayer began to make an Opening Statement and in so doing began to tender evidence. When the process regarding testimony under oath was reviewed with Hayer he stopped his Opening remarks instead asked to give testimony under oath.

WITNESSES #1 FOR THE RESPONDENT - HAYER

Hayer stated he was not involved in forcing the Buyer to sign any papers and he was not involved in any fraudulent activity including a transaction at the bank. The Buyer's claim is that she had no clue what she had signed but all information was given to her and her uncle. The Buyer provided the required $5,000 deposit, which she wouldn't have done if she wasn't aware of what she was doing.

Hayer testified that at the time this transaction was done, the market was very hot. He believes the Buyer had submitted offers with other agents and knew that if she put a condition in the Offer, she would not get the Property. She was fully aware of what it meant to put in an offer without conditions, and she was aware that if anything went wrong with the mortgage, she would be fully responsible.

The Offer was firm at $499,000 and the Buyer had agreed to that price. Hayer testified that he showed her comparable properties, and everything was in the $550,00-$560,000 range, so she agreed to submit the Offer at $499.000.

Hayer admitted that his only mistake was that he should have made the Offer conditional on financing, but he did not and that is his fault.

Regarding the Buyer's testimony about the mortgage, Hayer said that he did not promise to get her a mortgage. He did not refer her to a mortgage agent. He said that perhaps she had spoken to Representative A about the mortgage but not to him.

Hayer further testified that he had nothing to do with putting funds in the Buyer's account. The Buyer's own evidence is that Representative A did that, and Hayer said he was not aware of any communication between Representative A and the Buyer regarding this deposit.

The Buyer had mentioned an RBC bank fraud and knew at the outset that she had had a hard time getting a mortgage. Hayer believes that is why she was declined for the mortgage. The Buyer did not take things seriously and must face all the penalties.

PROSECUTION CROSS EXAMINATION OF DEFENCE WITNESS #2 - Representative A

Hayer confirmed the Buyer's testimony that she had communicated to him her financial limitation of $450,000 and that is why he said he was sending her listings in that price range.

Hayer was presented with the Buyer's testimony that Hayer did not provide her with a copy of the Listing for the property, nor did he advise her of the list price. Hayer responded that he provided her with the information including the properties that were sold in the area. He said she was aware of the price and that the Listing was below market value and $499,000 was the Buyer's number that she had agreed to.

In the ASFP, Representative A contradicted this and stated that at no time did he or Hayer advise Buyer of the list price for the Property. When questioned about the discrepancy between Representative A's admission and Hayer's testimony, Hayer maintained that he did tell the Buyer the price and provided her with a copy of the Listing. He said he had no idea what Representative A had agreed to and could not comment on that. When directed to a copy of the ASFP (Pages 283-288, Exhibit 3), Hayer said he did not receive a copy and had missed it in the documents. Hayer said his thoughts are different and that maybe Representative A was wrong.

To clarify whether Hayer and Representative A worked as a team, Hayer stated he and Representative A did not work as a team as they did not split everything. Hayer had his own transactions as well. On this specific transaction, Hayer said he was the one who communicated with the Buyer.

The Prosecution followed up on Hayer's testimony that he provided comparables to the Buyer in the $560,000 range. Hayer confirmed that the Buyer had asked for the information and that he had provided the comparables of what had sold in the area and he said that the Buyer had already admitted that.

Reviewing Hayer's and Representative A's joint response to the Complaint, (Page 129, Exhibit 3), Hayer confirmed that he and Representative A did not file individual responses but responded together as a team. Hayer stated he was unaware he could have responded on his own, so they responded together. The Prosecution suggested that RECO did not require that they respond together, but they did so because for this

transaction they both acted together for the Buyer as a team. They both spoke to her, toured the Property with her, were both there when she made the Offer, so both were directly involved with the Buyer's purchase of the Property. Hayer confirmed this.

In Hayer's and Representative A's response to RECO, they provided a document of comparable properties, and they stated that they were making the case that the price they offered was a reasonable price. The Prosecution asked if Hayer had reviewed Exhibit 3 before the Hearing and Hayer said he went through it but perhaps he had missed information. He did not recall the list of comparable properties but said that if the document was there, he had submitted it.

The Prosecution continued that the document shows a number of sales on 1 A Street, and this would have been the information that would have been most relevant to the Buyer. The Prosecution also pointed out that the report shows sales that all predate the Offer and none of the properties sold for over $500,000.

The Prosecution suggested that at the time that Hayer met with the Buyer on March 20, 2017, all the comparables that existed at that time, none were over $500,000 (Page 134, Exhibit 3). The Prosecution put to Hayer that he did not share this information with the Buyer, that he presented other properties that had sold over $500,000. Hayer responded that he had done the research and sent her what he found to be accurate.

The Prosecution noted that Hayer had just given evidence that the comparable properties were over $500,000 and that he wasn't referring to the properties on the list provided in Exhibit 3, because none of those sales were over $500,000. Hayer responded that he could not remember.

The Prosecution suggested that based on Hayer's testimony that he gave under oath, Hayer had given inflated values to the Buyer.

Hayer responded that he did not inflate anything because market conditions were booming at the time, every day the price was going up and that the next property that sold, sold for $526,000, that was just one day after the Offer.

The Buyer's evidence was that Hayer misled her in this transaction and Hayer denied that even though he gave evidence that when he met with the Buyer, he gave her information about comparable properties of $530,000-$560,000. Hayer said he did not make up any numbers that he had shown her whatever was sold.

Hayer confirmed that the Buyer asked him how much she could get the Property for and $499,000 was the number that the Buyer had chosen and agreed to for the Offer price.

The Prosecution suggested that Hayer had already picked that number before he sat down with the Buyer and reviewed the Offer. Hayer responded that it was a number that was mutually agreed on.

The Prosecution challenged Hayer, saying that the price had already been confirmed with the sellers, that it was the price that the sellers wanted. Hayer added that the Buyer had confirmed the price.

The Prosecution pointed out that on the APS (page 113, Exhibit 3), some of the areas are hand-written, such as the Buyer's name and deposit amount but the price of $499,000 was already typed and not hand-written before he and the Buyer and the others arrived at Tim Hortons. Hayer said that when the Buyer had put in offers with other agents, she was not successful in getting the properties, so she was very aggressive about getting the Property. She had agreed on the number, but she was not sure she could get the mortgage on her own, so she was unsure if she was going to put her parents on the APS, but the numbers were already confirmed.

The Prosecution highlighted that Hayer was brought up for the first time and that he wasn't sure if there were to be other purchasers in addition to the Buyer. He had not said anything about this in his written response to RECO, in his testimony or on cross-examination.

Hayer said he thought that there should have been a counteroffer, but the Prosecution noted and Hayer agreed that there was no counteroffer.

The Prosecution asked Hayer for confirmation that the Buyer had concerns about the price being over her limit. Hayer denied that the Buyer had raised concerns and

responded that if the Buyer had any issue with the price, she should have counter offered. By looking at the paperwork, he said he didn't think she had any issue with the price. Hayer said he could not remember that far back.

The Prosecution asked if he didn't find it to be odd that someone had expressed concerns about her limit and not raised concerns before signing the Offer? Hayer responded that if the Buyer had concerns, she should not have signed the Offer, that he had not forced her to sign.

The Prosecution asked if Hayer, as the Buyer's representative was concerned, given that he knew her financial limit and asked Hayer if he had told the Buyer that there would be legal consequences if she did not get the mortgage and if he suggested that they put it in a financing condition. He said that he had not, and that it was his fault.

Hayer stated that he did tell the Buyer about the risks, and she knew about this because she had put in a few offers with a financing condition and was not successful at getting any of the properties and that is why she decided to go firm on the Offer.

The Prosecution highlighted that Hayer's statement contradicts the Buyer's testimony and Representative A's ASFP. Hayer confirmed this.

The Prosecution noted that the Buyer testified that Representative A and Hayer told her that they would take care of the mortgage financing. Hayer responded that he had not made any promises, but he did not know about Representative A because he was not present. The Prosecution pointed out that this was discussed at the Tim Horton's meeting, at which they were both present. Hayer said he was present but that he did not discuss anything about the mortgage and that even the Buyer had said that she had that conversation with Representative A and not with him.

The Prosecution stated that Hayer was there and that he was part of the discussions where promises were made to the Buyer that he and Representative A would ensure that she got the mortgage financing because she was concerned about the price, that she wouldn't be approved. Hayer responded that he did not have anything to do with that, and he did not make any promises to the Buyer.

The Prosecution asserted that Hayer would not have had a sale that night unless the Buyer agreed to the price, he brought to her. Hayer responded that there was no pressure but that it was a hot market, that the Property would sell quickly. Hayer agreed that he would not have had a sale that night if the Buyer did not agree to that price.

The Prosecution continued that as part of getting the Buyer to agree, Hayer and Representative A made promises that financing would be secured, to make the deal.

Hayer said he did not do that. He said the market was hot and listing a property in that market meant that it would sell the same day with multiple offers.

Hayer admitted that he made a mistake in not including a financing condition in the Offer and the Buyer could have been out of the contract fairly quickly if the condition was in the Offer. He was not involved with arranging the mortgage, the deposit, which was all the Buyer's communication with Representative A.

Clarification was sought about Hayer's role in the transaction. He responded that he did all the paperwork, prepared the Offer and presented the Offer.

Hayer was asked if there was anything else he did other than prepare and present the Offer. He said he believed he also picked up the deposit cheque.

PANEL QUESTIONS

The Panel asked who prepared the extension requests and Hayer responded that he didn't remember anything else about this but thought the lawyer was involved. He said his role was that of an agent and nothing else.

The Panel asked who the Buyer's selling agent was. Hayer responded that he believed it to be Representative A. He said he was unsure. He did not remember it as it had been long ago. If he had signed an agency contract with the Buyer he said that it would have been with himself or Representative A.

When asked how he provided the listing information to the Buyer, Hayer said she was getting automatic e-mail listings, but the Property was not listed, and they told her verbally that the Listing was coming to the market.

The Panel sought confirmation of which of the two agents promised that they would help the Buyer secure her financing. Hayer responded that he did not promise that to her. He said that the Buyer had testified that it had been Representative A who deposited and withdrew money from the Buyer's account.

Hayer confirmed that he had not received anything in writing advising that the Buyer had been declined for the mortgage. After the transaction failed, Hayer stated that the Buyer had texted him a few times and he was not able to reply to her texts. He had some contact with the Buyer and could not remember whether by phone or text but probably both, but nothing much. He believed she was dealing directly with the lawyer.

QUESTIONS FROM PROSECUTION ARISING FROM PANEL QUESTIONS

In terms of himself and Representative A, Hayer said that he didn't remember who represented the Buyer but he believed one was representing the sellers, and one was representing the Buyer. The Prosecution pointed out that they were both representing the Buyer. In the APS, (page 117, Exhibit 3), both Hayer and Representative A are shown as representing the Buyer. It is put to Hayer that both acted on behalf of the Buyer, both showed her the Property, and both were present at the meeting when she signed the Offer. Hayer confirmed that. The Prosecution drew attention to the fact that in the joint response to the Complaint (page 129, Exhibit 3), it states "Our client, Buyer A…".

In addition to preparing the paperwork and presenting the Offer, the Prosecution suggested that Hayer was also involved in facilitating her dealings with the mortgage broker. Hayer responded he was not and he was sure of that.

Contradictory to Hayer's testimony that he had nothing to do with assisting the Buyer in obtaining financing, the Prosecution pointed to texts (Page 185, Exhibit 3), that Hayer had sent to the Buyer providing an address for the mortgage broker and listing the documents she would need for the mortgage broker. Hayer said he provided the information, but he did not promise her the mortgage and does not remember anything other than that.

The Prosecution referred to a further text of July 20, 2017, (page 105, Exhibit 3) where Hayer asked the Buyers to go to the bank and to be on time. These were texts Hayer sent to the Buyer the day the deposit and withdrawal of money took place. The Prosecution put to Hayer that he was involved. Hayer responded that he had no idea about that, that Representative A could have told him to send the Buyer a text to meet at the bank. Hayer denied that he had anything to do with the financing.

CLOSING SUBMISSIONS FOR THE REGISTRAR, REBBA 2002

The Allegation Statement in tab 1 of Exhibit 3 sets out the allegations against Hayer in this matter. There is also the advantage of having a decision with respect to the other member of the team, Representative A, who made admissions and entered an ASFP in 2020, in which Representative A admitted to a number of facts which also appear in the Allegation Statement against Hayer.

There is conflicting evidence of witnesses, including evidence relating to some material facts.

The Panel must determine whose evidence to accept, and the Prosecution submits that the evidence of the Buyer and that of Representative A should be preferred over that of Hayer for several reasons:

The Buyer's recollection of events provided in her evidence was much clearer. Herr recollection was far superior to that of Hayer. The details of the events were much clearer than Hayer. Hayer's evidence changed dramatically throughout his testimony. Many times, he wasn't sure or couldn't remember as it was a long time ago. At the very least his recollection and recall were not as strong as the Buyer. The Buyer's evidence at the Hearing was consistent with what she stated from the outset, when she made the Complaint.

The Buyer's evidence is corroborated by Representative A's admissions in the ASFP. Representative A made admissions to wrongdoing, as admissions against his interest. They were not positive things for Representative A to admit to or acknowledge, they were negative, which resulted in consequences for him. There is a soundly held general

view that when admissions or evidence are given that reflect poorly on the witness and their position, in general, it is more reliable evidence than other types of evidence, because it is against their interest. In that respect, Representative A's evidence is more reliable. When combined with the Buyer's evidence, the evidence of the two witnesses corroborates each other and are consistent with each other and, in many cases, are not consistent with Hayer's evidence. Setting aside that Hayer's evidence changed throughout his testimony, he often could not remember details and in many cases was not responsive to questions, all indicators of not good recall or not credible evidence.

It is RECO's position that where there is a conflict with the evidence of Hayer, the Panel should accept the evidence provided by the Buyer and Representative A.

In terms of what that evidence revealed, the Buyer was alerted to the Property on March 20, 2017, but she wasn't told that the Property was listed and what the list price was. The failure to provide that information, in this case, is indicative of the general mistreatment of the Buyer throughout this transaction. The Buyer was induced into a transaction that was not appropriate for her, without full knowledge based on the conduct of Representative A and Hayer.

In Representative A's ASFP, he agreed that information had not been provided to the Buyer (Page 284, Exhibit 3). At paragraph 10: "At no time did Hayer and Representative A disclose to Buyer A the list price for the Property or that the Property was listed on MLS".

Representative A, in the ASFP, admitted to the very thing that the Buyer said had occurred, that she was not told about the Listing and was not provided with the list price.

Hayer denies that and states that the Buyer was provided with the Listing and the list price yet, when questioned by one of the Panel members on how he provided her with the Listing, he was unclear about that. He referred to some e-mails and then said he told her orally. There are a conflict and the evidence in the Prosecution's submission supports the fact that this information was not provided to the Buyer.

There is no dispute in the Buyer's evidence that she told Hayer that she had financial limitations and that her limit was $450,000. Hayer, in his evidence, acknowledges that the Buyer had communicated that information to him. There is agreement with respect to this fact, and it is important information because it supports what happened after the fact with this transaction and informs whose evidence should be accepted where the evidence conflicts.

There is no dispute that the Property was viewed on March 20, 2017, and that there was a meeting that evening at the Tim Hortons near the Property, at which point the Offer was signed to bring to the sellers. The Offer was accepted by the sellers, without any changes.

The Buyer's testimony is that the offer price of $499,900, was a price proposed by Representative A and Hayer. Hayer initially denied that and said that it was the Buyer who suggested the price, aggressively wanting to get the Property, however, when pressed on cross-examination, Hayer conceded that the price was already in the Offer when presented to the Buyer, which is obvious when looking at the document because the price was already typed, the rest being completed by hand. Hayer conceded that the price in the document was not the Buyer's price but the price that the sellers were willing to sell for and that it had been put in the document before it was presented to the Buyer for signing. Instead of putting it forth as an offer of the sellers, which in essence is what it was, they turned it around as the Buyer's offer. Hayer and Representative A went to the meeting at Tim Hortons with the price that the sellers wanted and got the Buyer to agree to the price that the sellers wanted, as her offer.

The Buyer testified that she was concerned about that price because it was above her $450,000 limit. It is important to remember that Hayer acknowledged that he was aware of this limit.

The Buyer's evidence is that the reason she went ahead with the Offer, despite it being over her limit, is because Representative A and Hayer promised her that they would get her the financing. This is something that Representative A agreed with in the ASFP

(paragraph 12-17, Exhibit 3, page 284) It is for this reason that the Buyer agreed to move forward with the Offer prepared by Hayer and Representative A.

Representative A corroborates the Buyer's evidence. Common sense also supports the Buyer's version of events because no one disputes that she had a limit of $450,000. One has to ask why someone who has already expressed a limit to what she can afford would enter into an agreement that is $50,000 beyond her limit? It makes no sense especially without the financing. The simple explanation is that the Buyer acted in reliance on assurances by Representative A and Hayer that they would get the financing for her. The Buyer's evidence and Representative A's evidence corroborate each other and make sense in all of the circumstances. Hayer's evidence was that there was not an issue and that no promises were made with Hayer, going as far as saying that the Buyer refused a condition on financing, trying to put all the blame on the Buyer, who he was representing, excusing himself from any responsibility.

Hayer's evidence is directly opposed by the Buyer's evidence and by the evidence of Representative A. The evidence is clear that both Hayer and Representative A represented the Buyer, as is common with teams, and in this case a joint representation was established. The documents and the conduct support this. Hayer and Representative A referred to the Buyer as "Our client" in their joint response to the Complaint. There is no dispute that Hayer and Representative A were representing the Buyer in this transaction. They are also both represented the sellers.

It is Hayer's position that the Buyer, despite her concerns and despite Representative A's corroborating evidence, was the driving force behind this transaction, even though Hayer at first denied and then acknowledged after the fact, that it was he who put forth the price and got the Buyer to agree to the price.

The Buyer's evidence is that there were no discussion or suggestions about having a financing condition in the Offer to protect her. Again, common sense supports the Buyer's version of events that it was Hayer who prepared the Offer and brought it to Tim Horton, all typed out except for name of the Buyer and deposit amount, and Hayer did not suggest or include a condition. There were no conditions on financing that had to be

struck out. It was never Hayer's intention to put forward a condition on financing otherwise he would have included it in the Offer as he drafted it. It particularly does not make sense when Hayer knew that this price was $50,000 over what the Buyer could afford. If Hayer did have any concerns that he wanted to address about the Buyer's financial position, as her representative, knowing that the Offer was going substantially beyond what she could afford, he would have taken steps to address these concerns at the outset.

It was submitted that after the fact Hayer concocted a story that he did suggest a financing condition and that it was the Buyer who turned him down. There is nothing whatsoever to support this. In fact, in the ASFP, Representative A specifically acknowledges that he encouraged Buyer A to submit the Offer without proposing any conditions to protect her if she was unable to finance the purchase. Although the ASFP is binding only on Representative A, the fact that he admits that there were no efforts to include a condition, is consistent with the Buyer's evidence. In all the circumstances, Hayer's evidence of this is just not credible.

The Prosecution submits that Hayer was actively misleading the Buyer into believing that the Offer price was the right price because he did admit in his evidence that he had provided the Buyers with comparables that were in the $500,000 plus range. This corroborated the evidence that the Buyer gave about what was given to her the night that the Offer was signed. The Buyer said in her evidence that Hayer had provided her with comparable properties up to $560,000.

Hayer initially agreed with the evidence, and it was only when the Prosecution pointed out to him that in his actual comparable properties that he put forward in his response to the Complaint were all under $500,000, it became apparent during the Hearing that in the comparable properties Hayer provided to the Buyer he withheld the most relevant sales, which he later provided in his written response to the Complaint, none of which were over $500,000. It is unclear what properties were put forward the evening the Offer was signed. The Prosecution submits that Hayer's conduct supports that he was acting in a misleading and deceptive manner throughout the transaction. While this is not

specifically set out in the Allegation Statement, the Prosecution submits that it is relevant evidence to determine who to believe - who is most credible? It is consistent with the entire story of misleading conduct, deception and disregard for the Buyer's interests. It corroborates the Buyer's version of events and undermines Hayer's own evidence that he is the good, helpful representative, looking out for his client, the Buyer.

The Buyer indicated that she was not provided with a copy of the APS the night of the transaction. In fact, she did not get a copy until well after the fact, during litigation. That again was a failure on the part of Representative A and Hayer, controlling the information but Representative A does acknowledge that fact did happen, as part of the ASFP(paragraph F): "Representative A failed to keep Buyer A informed of his actions and steps on her behalf, including failing to provide her with a copy of the Agreement of Purchase and Sale..." Representative A's admission is consistent with the Buyer's evidence and the Prosecution submits that the Buyer's evidence should be accepted on that basis.

On the issue of mortgage financing and what occurred, Hayer's evidence was that he tried to deny that he had any role or involvement in that process whatsoever and seems to seek to put all the responsibility on Representative A, as something that Representative A took on his own.

Notably, a very important fact, Hayer did not challenge the Buyer's evidence or Representative A's evidence on the issue of obtaining financing. Hayer did not counter any of the evidence to support his argument that he was not involved in the mortgage financing. He didn't give the Buyer and Representative A an opportunity to respond to his alleged version of events when they testified. He chose not to cross-examine the witnesses. This is problematic from a fairness point of view and indicative of whom should be believed from a credibility perspective. When one does not challenge or contest testimony provided by the witnesses, they can't later say that the witnesses' evidence is inaccurate or that they shouldn't be believed or that they are not credible. He testified that he was not involved in the financing after the other witnesses had testified and could no longer respond to allegations of untruth.

Representative A did admit in the ASFP that the Buyer acted based on assurances by Hayer and Representative A that she would qualify for a mortgage.

Hayer later stated in his evidence that it was both he and Representative A who scheduled a meeting with the mortgage broker and it was both who took several actions to help the Buyer secure her financing. Representative A's indications are that Hayer was involved with the financing, and the Buyer's evidence was that Hayer was involved. Text messages confirmed Hayer's involvement in providing information that was relevant to financing and arranging the Buyer's attendance at the bank on the day that money was moved. Hayer's position was that unless the texts specifically state what the texts were about, it does not prove anything. Hayer could not provide an alternate explanation about the reasons for the texts. The texts support overall the evidence that Hayer and Representative A were a team, which they both acknowledged, working together representing the Buyer in this transaction.

Ultimately Hayer's evidence was not credible. It changed over time, his memory was not good, he said that he could not remember details, except for some times when he could, when it was helpful to his position. He did not answer questions directly and ultimately his evidence conflicts with the paper record and with the evidence of the only two other individuals who were involved throughout.

It is for these reasons that the Prosecution submits that the evidence supports the Buyer's version of events.

With respect to the Allegation Statement (Page 8, Exhibit 3), the first allegation, Allegation A, is that Hayer did not disclose and/or withheld the true facts linked to the Property including that the Property was listed on MLS at a list price of $390,000. It is not disputed that the Property was listed on MLS at $390,000. The document was provided as part of the Complaint (Tab 3, page 77, Exhibit 3).

The evidence of Representative A and the Buyer supports that that information was not disclosed to the Buyer. It was only listed that day. Neither Representative A nor Hayer could dispute that the Property was listed and what price it was listed at.

Allegation B alleges that Hayer encouraged the Buyer to submit an offer that was greater than the Buyer indicated she could afford without proposing any conditions to protect the Buyer's interests. The evidence is clear, and these facts have been established. Hayer did encourage the Buyer to tender the Offer and he went to the Buyer with the Offer already prepared for $499,900, which was the sellers' price and Hayer and Representative A then convinced the Buyer to agree to sign by making promises to secure financing despite knowing that the price was beyond her limit. The fact that there was no discussion about conditions and no condition in the Offer with respect to financing, is consistent with the fact that Hayer and Representative A were not acting in the Buyer's best interest.

If the Panel accepts or believes that Hayer and Representative A's conduct favored themselves or the sellers, then it makes sense that they would not include a financing condition because that would have been a problem for the deal to be accepted.

In Allegation C, it is alleged that Hayer promised to secure financing for the Buyer to allow her to purchase the Property at the price he had suggested she offer and he then failed to keep that promise. The evidence supports this allegation. Representative A admits that those promises were made. The Buyer testified that these promises had been made and that is why she went ahead with a purchase beyond her financial means.

With respect to Allegation D, that Hayer made efforts to manipulate the true nature of the Buyer's financial situation in pursuit of financing, it has to do with the money in and out of the Buyer's account. Representative A has admitted that this happened and Hayer denies he had a role in it. It is RECO's position that Hayer's position is not credible, as Hayer and Representative A were working together as a team throughout, including during the financing part of the transaction and that Hayer, through his texts, arranged the Buyer's attendance at the bank.

In Allegation E, it is alleged that Hayer pursued extensions of the closing date and then sought the agreement of the Buyer afterwards. The Prosecution admits that there was not a lot of evidence in this point at the Hearing. These requests were made by Hayer

and Representative A for the purpose of getting more time for the financing. Representative A admits to this in the ASFP.

Allegation F alleges that Hayer failed to keep his client informed of his actions with respect to steps taken on her behalf, including failing to provide her with a copy of the APS. The Buyer provided evidence that she was not provided with a copy of the APS, and Representative A acknowledged that this is what happened. Hayer's position is that this did not happen. It is Prosecution's position that the weight of the evidence supports the contrary, that Buyer was not provided with a copy of the APS.

The last allegation, Allegation G, is that the described misconduct is collectively indicative of Hayer's disgraceful, dishonorable, unprofessional and unbecoming conduct. In RECO's view, all of these apply.

It is RECO's position that the evidence strongly supports that the allegations made in the Allegation Statement and the alleged breaches of the Code of Ethics have been proven. It is submitted that Representative A's strong evidence, where he admitted to all of the misconduct as part of his role in this transaction, being part of a team, combined with the Buyer's evidence and the paper record, which supports her version of events, and Hayer's lack of credibility all support the facts alleged and the findings that are being sought in this case.

SUBMISSIONS FOR THE RESPONDENT

Hayer submits that Representative A admitted his wrongdoing in the transaction and he is trying to put blame and responsibility on Hayer. Hayer noted that there is no direct communication between him and the Buyer in this transaction and no evidence that he offered her any help in getting financing.

Hayer stated that he did draw up the Offer and takes responsibility for not including a financing condition in the Offer, but he asserts that he was not involved in the rest of the transaction.

SUBMISSIONS REGARDING PENALTY

CODE OF ETHICS

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

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*.

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).

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

Having carefully considered the testimony of the witnesses at the Hearing, and the documentary evidence, the Panel has arrived at the following conclusions.

In these Reasons, references are made to Hayer and Representative A. The Panel has only considered the allegations made against Hayer. The allegations made against Representative A have been dealt with in the 2020 ASFP.

Pertinent to the Panel's deliberation is the significant conflicting evidence and testimony regarding the material facts of this case. Where there is conflicting evidence, the Panel is charged with evaluating the whole of the evidence to arrive at what is most likely to have occurred, what is plausible and probable given the sequence of events. The Panel must ultimately make its determinations based on a balance of probabilities.

The discrepancies in evidence and testimony are with respect to key issues in the transaction such as:

•Did Hayer withhold that the Property was listed at $390,000 on the MLS?

•Did Hayer induce the Buyer into signing an unconditional offer at a price above what she could afford by:

(a) providing inflated comparable sale data;

(b) providing assurances that Hayer would be able to arrange financing for the Buyer;

(c) manipulating the Buyer's financial position to assist in getting financing.

•Did Hayer provide the Buyer with copies of documents she had signed and keep her up to date on all steps taken on her behalf in the transaction?

GENERAL - CREDIBILITY

The Panel took into consideration the Prosecution's submissions about assessing credibility. It was the assertion of the Prosecution that the evidence of the Buyer and Representative A should be preferred over that of Hayer.

Following a review of the written evidence and the testimony of the witnesses at the Hearing, it is the Panel's determination that the evidence of the Buyer and Representative A was more credible than that of Hayer for the following reasons:

1. The Buyer's recollection of the relevant facts and sequence of events was superior to that of Hayer.
2. The details the Buyer provided in her evidence were clearer while Hayer's evidence changed during his testimony and on cross-examination.
3. The Buyer's evidence was consistent with the Complaint that she originally filed in 2018.
4. The Buyer's testimony was consistent with Representative A's admission of facts in the ASFP.
5. Representative A admitted to facts that were against his interest, which is significant in assessing evidence. Because his admissions were against his

own interest and they led to adverse consequences for him, his evidence is likely more reliable.

6. The Buyer and Representative A corroborated each other's evidence and the evidence from each of them was for the most part consistent throughout the Complaint process and in oral testimony.
7. Hayer was not responsive and he was evasive in his testimony. He spoke in half sentences, often not completing his answers. In addition, he often either changed or contradicted his own evidence, or suddenly could not remember facts when answering certain questions leading the Panel to question whether Hayer really could not remember or this was a lack of credibility. Hayer lacked consistency in details, in his written evidence and in his testimony.

THE ALLEGATIONS AGAINST HAYER

ALLEGATION A

A. Hayer did not disclose and/or withheld the true facts relating to the Listing of the Property, including that the Property was listed on MLS and had a list price of $390,000, contrary to sections 3, 4, 5, 21, 37(1), and 38 of the Code of Ethics.

Hayer's testimony was that he gave the information about the Property being listed and the list price to the Buyer verbally. There was no corroborating evidence to establish this. In fact, the evidence of the Buyer and of Representative A was that this is not true. The Buyer's testimony was that Hayer did not provide the details to her even after repeatedly being asked for the information by the Buyer's uncle. The Buyer's evidence was corroborated by Representative A in his testimony and the admissions he made in the ASFP in 2020. For these reasons, the Panel accepts the evidence of the Buyer on this issue and finds that Allegation A has been proven.

With respect to Allegation A, the Panel found Hayer in violation of Code 3,4, 5, 21, 37 (1), and 38. By his conduct in failing to advise the Buyer that the Property was listed and had a list price of $390,000, Hayer did not treat the Buyer honestly and with integrity

contrary to Section 3. He did not act in the best interests of the Buyer, contrary to Section 4. He did not provide conscientious service, and he did not demonstrate reasonable knowledge, skill, judgment and competence contrary to Section 5. He did not disclose material facts to the Buyer contrary to Section 21(1). Hayer knowingly made an inaccurate representation to the Buyer contrary to Section 37(1). He failed to prevent error or misrepresentation in a trade in real estate contrary to Section 38 of the Code of Ethics.

Allegation B

B. Hayer encouraged his client, the Buyer, to put forth an offer that was greater than the Buyer had indicated she could afford and did so without proposing any conditions to protect her interests in relation to the possibility that she would be unable to finance the purchase, contrary to sections 3, 4, 5, 6(1) and 38 of the Code of Ethics

Testimony and written evidence established that on at least three occasions, the Buyer had advised Hayer that she could not go over her limit of $450,000 to purchase a home. When she first met Hayer and she saw a property with him she told him about her financial limitations. Hayer e-mailed listings to her that were over her price range. In an e-mail from Hayer dated January 19, 2017, he states that the Buyer registered to receive listings with a price range of $320,000 to $420,000 (Exhibit 3, page 19). The Buyer testified that she reminded Hayer that she could not exceed $450,000.00. Hayer acknowledged that and adjusted the listings that were sent to her. Again, when Hayer suggested the offer price of $499,000.00, the Buyer stated that she reminded him she could not afford that price as she was only qualified for $450,000.00.

Yet, the Buyer signed an offer for $49,000 over her purchasing limit.

Even though the Buyer was not aware of the list price ($390,000), Hayer induced her to submit an offer for $109,000 over the list price, knowing that she could not afford it and by his own admission, he did not include a financing condition.

When the Buyer first met Hayer in late 2016, she advised him of her financial limitations and alluded to the fact that she had had difficulty getting financing in the past. There

was plenty of time for Hayer to confirm the Buyer's financial position before submitting an offer. He did not conduct himself professionally and ethically when he did not insert a condition in the Offer to protect the Buyer if she was unable to arrange a mortgage for the purchase. Given that he had this information, there is no logical reason for not including a financing condition in the Offer.

Hayer's testimony was that the Buyer insisted on submitting the Offer without conditions, but he also admitted in his testimony that he made a mistake in not including a financing condition in the Offer. Hayer had an obligation to give advice and direction to the Buyer about making an unconditional offer and he ought to have had the Buyer provide written instructions and consent to submitting the Offer without conditions. This would have corroborated with his evidence that they had a conversation about a firm versus a conditional offer. There is no such consent nor an e-mail trail showing Hayer advising the Buyer of the risks she was facing if she submitted a firm offer.

Hayer would have known the ramifications of not getting the mortgage approved. By not inserting a financing condition in the Offer, Hayer also put the sellers at financial and legal risk. Given that the Buyer was unable to close the sale transaction, the sellers had to arrange additional financing to close their purchase transaction.

The Buyer testified that the option of putting a condition in the Offer was not discussed. Hayer admitted in his response to the Complaint and in testimony that he made a mistake by not including a condition in the Offer. In the ASFP, Representative A admitted that the Buyer was not given the option to include a financing condition in the Offer.

The Panel accepts the evidence of the Buyer that she was not advised to put a financing condition in the Offer. The Panel finds that Hayer failed to adequately protect the Buyer`s interests in the transaction and placed insufficient weight on the risks associated with proceeding with an unconditional offer beyond the Buyer's stated financial limit.

The Panel found that Allegation B is proven and Hayer is in violation of sections 3, 4, 5, 6(1) and 38 of the Code of Ethics.

In his conduct as described above, Hayer did not treat the Buyer fairly, honestly, and with integrity contrary to Section 3 of the Code of Ethics. He did not protect the Buyer's interest's contrary to Section 4. He did not provide conscientious service, contrary to Section 5. He did not demonstrate reasonable knowledge, skill, judgment, and competence in providing services to his client, the Buyer, contrary to Section 5 and to the Buyer and to the sellers contrary to 6(1) of the Code of Ethics. He also did not use best efforts to prevent error or misrepresentation contrary to Section 38 of the Code of Ethics.

Allegation C

> C. Hayer promised to secure financing for the Buyer to allow her to purchase the Property at the price he had suggested she offer, and then failed to keep that promise, contrary to sections 3, 4, 5, and 38 of the Code of Ethics.

It is improbable that the Buyer would have gone over her limit unless there was a compelling reason for doing so, in this case, it was based on assurances made by Hayer and Representative A that they would be able to get the financing for her.

Representative A admitted this in the ASFP.

Hayer promised to secure financing to convince the Buyer to purchase the Property at a price he had proposed, which was above her limit, and then he failed to keep that promise. The Panel acknowledged that while real estate agents cannot control the outcome of what banks agree to lend, the question is whether Hayer had made such assurances to the Buyer and based on all of the evidence the Panel accepts the Buyer's evidence and finds that Hayer did make such assurances.

Hayer sent a text message to the Buyer with the contact information for the mortgage broker and listed the documents she needed to proceed with the financing in that text message (Exhibit 3, page 185). The text came from Hayer, not from Representative A.

Hayer and Representative A convinced the Buyer or led her to believe that they would help her secure financing for the purchase. It does not make sense and, hence, it is

improbable that the Buyer would have put in an offer above her financial limit if Hayer and/or Representative A had not convinced her that they would be able to get the financing for her.

There was no evidence led at the Hearing that the Buyer was advised that she was to be responsible for arranging her own financing. The evidence suggests that she would never agree to arrange her own financing when she knew her financial limit and was very firm about it. Evidence and testimony submitted at the Hearing supports her evidence that she only agreed to proceed based on the assurances that had been provided to her by Hayer and Representative A.

There was no evidence or testimony before the Panel that suggested that when the Buyer signed the Offer, or at any other time Hayer or Representative A advised her that they would not arrange the financing.

Both the Buyer and Representative A's evidence was that both Hayer and Representative A showed the Property to the Buyer, and her family, and they were both at the meeting where they convinced her to sign the Offer. Hayer disputed this in his evidence. He also testified that he didn't remember making any promise. Again, as discussed above in relation to credibility of the witnesses, the Panel accepts the evidence of the Buyer and Representative A on this issue as more credible than the evidence of Hayer.

In Paragraph F of the ASFP, (Page 284, Exhibit 3), Representative A admits that there were assurances made by him and Hayer regarding obtaining financing and that is why the Buyer agreed to move forward with the Offer. This corroborates the Buyer's testimony.

The Panel found that Allegation C is proven and Hayer is in violation of sections 3, 4, 5, and 38 of the Code of Ethics.

In his conduct as described above, Hayer did not treat the Buyer fairly, honestly, and with integrity contrary to Section 3 of the Code of Ethics. He did not protect the Buyer's interests contrary to Section 4. He did not provide conscientious service, contrary to

Section 5. He also did not use best efforts to prevent error or misrepresentation contrary to Section 38 of the Code of Ethics.

Allegation D

> D. Hayer made efforts to manipulate the true state of the Buyer's financial situation in pursuit of financing, contrary to sections 3, 4, 37(1), and 38 of the Code of Ethics.

The Panel found insufficient proof of Hayer's involvement in manipulating the Buyer's bank account. Hayer knew about the meeting at the bank because he texted the Buyer to meet Representative A at the bank and not to be late. The Buyer's testimony confirms that she met Representative A at the bank, and it was Representative A who deposited and withdrew the funds from her account. There was no evidence or testimony before the Panel that established that Hayer was present for the deposit and withdrawal of funds and, as such, the Panel found that Allegation D has not been proven on a balance of probabilities.

The Buyer stated she did not know why money was put into and taken out of her bank account. There was no evidence suggesting that the Buyer understood that these actions might be fraudulent. Regardless, this Panel is tasked only with determining whether Hayer breached the Code of Ethics and the Panel finds that this allegation was not proven.

Allegation E

> E. Hayer pursued extensions for the closing date for the Property of his own volition and then sought the agreement of the Buyer, thus failing to seek proper instructions in her best interests, contrary to sections 3, 4, 5, 23, and 38 of the Code of Ethics.

With respect to Allegation E, a review of the evidence discloses that there is insufficient proof of who prepared the extension requests. There is evidence of Representative A attending the Buyer's workplace to get her to sign an extension request and there was evidence that another extension request was sent directly to the Buyer by the real

estate lawyer, however, there was no evidence regarding the allegation that Hayer pursued extensions of his own volition. In Closing Submissions, the Prosecution admitted that there was little if any evidence submitted relating to this allegation. The Panel finds that Allegation E was not proven.

Allegation F

> F. Hayer failed to keep the Buyer informed of his actions and steps on her behalf, including failing to provide her with a copy of the Agreement of Purchase and Sale ("APS"), contrary to sections 3, 4, 5, and 23 of the Code of Ethics.

It was the Buyer's evidence that she was not provided with a copy of the APS or any other documents, and she only got a copy after she received the seller's' Statement of Claim. Hayer testified that he had given the Buyer copies of all of the documents. He tendered no documentary evidence and no other evidence to corroborate his position. There were no texts from Hayer or Representative A to the Buyer to advise the Offer had been accepted and no e-mails providing her with the accepted copy of the Offer.

As per the Confirmation of Acceptance, the Offer was accepted by the sellers at 10 pm on March 20, 2017 (page 117, Exhibit 3) There was no evidence before the Panel that suggested that Hayer or Representative A met with the Buyer after the Offer was accepted to give her a copy. The Buyer's signature and the date are not on the Offer acknowledging receipt of a copy. That section of the Offer exists to confirm that the parties have received their copy of the accepted Offer. The sellers signed acknowledging receipt of a copy, but the Buyer did not which would support her evidence that she did not receive a copy of the Offer.

There appears to have been very little contact between the Buyer and Hayer and Representative A throughout the process and once she did not obtain financing and was not able to close the transaction, both Hayer and Representative A stopped communicating with the Buyer. The text messages sent and received which were tendered into evidence at the Hearing substantiate this lack of communication on the part of Hayer (Exhibit 3, pages 106-109).

Again, referring back to the comments above regarding credibility, the Panel accepts the evidence of the Buyer on this issue as being credible and consistent.

The Panel finds that Allegation F has been proven, and the Panel finds that Hayer breached Sections 3, 4, 5, and 23 of the Code of Ethics. In his conduct as described above, Hayer did not treat the Buyer fairly, honestly, and with integrity contrary to Section 3 of the Code of Ethics. He did not protect the Buyer's interests contrary to Section 4. He did not provide conscientious service, contrary to Section 5. He also failed to inform his client, the Buyer, of all significant steps taken in the transaction contrary to Section 23 of the Code of Ethics.

Allegation G

G. Hayer engaged in disgraceful, dishonourable, unprofessional and/or unbecoming conduct in violation of Section 39 of the Code of Ethics.

With respect to Hayer's overall conduct in this transaction, Hayer's conduct was disgraceful, dishonourable, unprofessional and unbecoming. In coming to this conclusion, the Panel considered and accepted the findings of this Discipline Committee in *Real Estate Council of Ontario v. Carol Robson released August 21, 2023*. regarding section 39 of the Code of Ethics. The Panel found that Hayer's conduct met all requirements along the spectrum of unacceptable behaviour. Hayer's conduct was improper and unsuitable and therefore unbecoming. It was shoddy, careless and even negligent and therefore unprofessional. In terms of the more stringent test to be applied along the spectrum of conduct, the Panel finds that the actions of Hayer do involve dishonesty and deceit, particularly in the failure to advise the Buyer that the Property was listed for sale on the MLS and was priced at $390,000. Furthermore, conduct is disgraceful if it casts doubt on the member's moral fitness and inherent ability to discharge the obligations the public expects professionals to meet (See Robson, page 92 and *College of Nurses of Ontario v. Goldbar*, 2019 CanLII 73941 (ON CNO) The Panel finds Hayer's conduct to be disgraceful and dishonourable. Allegation G has been proven. Hayer is found in breach of Section 39 of the Code of Ethics.

Hayer handled the transaction poorly and he did not protect or promote the Buyer's interests, The evidence showed that Hayer misled the Buyer, withholding key information and inflating values when providing her with the sales data on comparable properties. The proof of the latter point is in Hayer's own response to the Complaint, where there were no sales over $500,000 in the comparables shown, yet he told the Buyer that homes in the area were selling in the $550,000-$560,000 range, making a case to the Buyer that the Property was being sold for under market value.

Even if the Buyer was a willing participant because she wanted the Property, Hayer knew of the Buyer's financial limitations so it is difficult to understand why Hayer would take the risk of orchestrating an offer beyond her financial capability and also not make the Offer conditional on arranging financing. A buyer would not have the knowledge to understand potential outcomes, but Hayer would have known the ramifications of the Buyer not getting the financing and not being able to close the transaction.

Not only was Hayer's conduct shoddy, careless, and negligent, it was dishonest. He failed to tell the Buyer that the Property was listed, and the list price was $390,000. He then made assurances which could not be made regarding financing and encouraged his client, the Buyer, to enter into a transaction beyond her financial means without putting a financial condition in the Offer.

If the motivation was to earn a commission for both ends of the transaction, Hayer put his interests before that of his Buyer and his seller clients. This could have all been avoided had Hayer chosen to conduct himself honourably, professionally and ethically.

When using the services of a real estate professional, the public has a right to expect that the real estate professional will comply with the duty to do the right thing, and act in the interests of persons involved and not according to his own interests If the right thing had been done in this matter, the parties would not have had to deal with this outcome.

In terms of the ramifications for the parties to this transaction, the Buyer has a significant Judgment against her, which she will have to deal with, all because of her reliance on Hayer and Representative A. This will have a significant impact on her credit future.

Hayer and Representative A also did not serve the sellers well. The sellers had to deal with the delays and uncertainty as to whether the transaction would close at all. They put their seller clients in a position that could have been financially ruinous if the sellers had been unable to arrange financing close on a subsequent purchase, they were committed to close. The sellers had to go to the expense of legal action against the Buyer, which incurred additional expenses. Eighteen months after the fact, both the Buyer and sellers were still dealing with the legal fall-out.

It must also be pointed out that Hayer and Representative A did not serve their own purposes either. If their aim was to profit from both ends of the transaction, the transaction did not close, and they did not earn any commission at all. The transaction was a failure for all involved.

During her testimony, the Buyer questioned why Hayer and Representative A would do this to her. It is a valid question. As indicated above, Hayer ‘s conduct throughout was disgraceful, dishonourable, unprofessional and unbecoming.

In conclusion, the Panel carefully considered the documentary evidence, the testimony of the witnesses, and the submissions of the parties. The Panel accepts that registrants operating under the Real Estate and Business Brokers Act, 2002 owe significant professional and ethical obligations to their clients, particularly where clients are vulnerable or reliant upon the guidance and expertise of the registrant in complex financial transactions. In this matter, the evidence established that Hayer failed to adequately protect the interests of his clients, the Buyer and the sellers, failed to ensure that material information and documentation were properly provided, and facilitated an unconditional transaction despite clear knowledge of the Buyer’s stated financial limitations. While the Panel did not find sufficient evidence to establish every allegation advanced by RECO, the conduct proven on a balance of probabilities as described above represents a significant departure from the standards of professionalism, competence, integrity and client protection required under the Code of Ethics.

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*.

If appropriate, submissions to be made on costs and expenses with submissions on penalty.

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

[Released: May 22, 2026]