
**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 -

JIMMY GHIMERY

DISCIPLINE DECISION AND REASONS FOR DECISION

Subject to Rule 4.02 of the Discipline and Appeals Committee Rules of Practice (*REBBA 2002*), I, the Chair of the Discipline Committee (*REBBA 2002*) have reviewed and considered the Agreed Statement of Facts and Penalty together with the Waiver of Hearing submitted by the Parties to this proceeding and provide the following Order:

FINDINGS: In violation of Sections 3, 7(1), 38 and 39 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$ 20,000.00 payable to RECO on or before December 31, 2024.

WRITTEN REASONS:

REASONS FOR DECISION

INTRODUCTION

This matter proceeded on the basis of an Agreed Statement of Facts and Penalty and Waiver of Hearing, pursuant to Rule 4.02 of the Rules of Practice (*REBBA 2002*).

The Agreed Statement of Facts and Penalty read:

AGREED STATEMENT OF FACTS AND PENALTY

1. Jimmy Ghimery (“Ghimery”) is registered as a salesperson under the Real Estate and Business Brokers Act, 2002 (“Act”).
2. At all relevant times, Ghimery was employed as a salesperson with Brokerage A, a brokerage also registered under the Act.

3. Company A is a corporation owned by Jimmy Ghimery.
4. Seller A (the "Seller") was the owner of a property located at 1-A Street, City A (the "Property").
5. Company A is a corporation owned by Randy Zivkovic.
6. Representative A is registered as a salesperson under the Act. At all material times, Representative A worked as a salesperson with Brokerage B.
7. Representative B is also registered as a salesperson under the Act. At all material times, Representative B also worked as a salesperson with Brokerage B became the Seller's representative following Representative A's leave of absence.
8. On or about November 16, 2016, the Seller retained the services of Brokerage B, with Representative A as their sales representative, to find an investor/buyer for the Property. This was a Non-Exclusive Seller Customer Service Agreement as the Seller did not want to list the Property on the Multiple Listing Service ("MLS").
9. Representative A advertised the Property using alternative methods, including, among others, on the Website A.
10. In or around April 2017, Ghimery contacted Representative A regarding the Property. Ghimery identified himself as a realtor with Brokerage A and stated they had a buyer interested in the Property.
11. On or about April 10, 2017, Ghimery presented an offer for the Property to the Seller and Representative A (the "April 10, 2017 Offer"). The offered price in the April 17, 2017 Offer was \$1,750,000 with a \$50,000 deposit.
12. The buyer listed on the April 10, 2017 Offer was Company A. Ghimery disclosed that he was the owner of Company A and included a Registrant's Disclosure of Interest Acquisition of Property form with the April 10, 2017 Offer. The disclosure stated as follows:

"I am one of the share holder [sic] of the purchasing corporation".

13. Following negotiation between Ghimery and the Seller, the agreement was amended to a sale price of \$2,100,000 with a \$30,000 deposit.
14. Ghimery and the Seller met independently from the Seller's representative approximately twelve (12) times to discuss the conditions involved to finalize the sale. Representative A did not provide Ghimery with consent to meet with Seller A without Representative A present.
15. On or about May 25, 2017, another offer was submitted by Ghimery on behalf of Company A to the Seller and Representative A (the "May 25, 2017 Offer"). The offered price in the May 25, 2017 Offer was \$2,000,000 with a \$35,000 deposit.
16. The Seller signed back the May 25, 2017 Offer and amended the price back to \$2,100,000 with a \$30,000 deposit. The Seller accepted the counteroffer.
17. On or about November 24, 2017, Ghimery created an Amendment to the May 25, 2017 Offer (the "November 24, 2017 Amendment"). In the amendment, the buyer was changed from Company A to Company B. Company B was another company formed by Ghimery and others.
18. Prior to the Seller signing the November 24, 2017 Amendment, the Buyer drafted a Mutual Release for the transaction (the "November 28, 2017 Mutual Release").
19. The November 28, 2017 Mutual Release was for the termination of the transaction between Company B and the Seller concerning the Property. The release also directed the deposit holder to disburse the deposit of \$30,000 payable to Jimmy Ghimery.
20. On or about November 28, 2017, Brokerage B received the November 28, 2017 Mutual Release by fax. The November 28, 2017 Mutual Release included the signatures of both the Buyer and the Seller.
21. The November 28, 2017 Mutual Release was purportedly signed and dated by both the Seller and the Buyer on November 24, 2017, with a confirmation of acceptance by all parties at 2:00 p.m. on November 24, 2017.
22. Brokerage B forwarded the November 28, 2017 Mutual Release to the Seller via email. At this time, the Seller notified Brokerage B that the Seller did not sign the

Mutual Release and that the signature on the November 28, 2017 Mutual Release was not the Seller's signature.

23. On or about December 1, 2017, the Seller signed the November 24, 2017 Amendment, agreeing to change the buyer from Company A to Company B. The Seller refused to sign a Mutual Release terminating the transaction or returning the \$30,000 to Ghimery.

24. The transaction did not close.

SUMMARY OF AGREEMENTS

It is agreed that Ghimery failed to comply with the Code of Ethics as follows:

A. Ghimery produced a Mutual Release that was purportedly signed by the Seller, while the Seller did not append their signature/or sign the said Mutual Release contrary to sections 3, 38 and 39 of the Code of Ethics.

B. On numerous occasions, Ghimery communicated and negotiated directly with the Seller without the knowledge and consent of the Seller's representative, contrary to sections 3, 7, 38 and 39 of the Code of Ethics.

It is agreed that Ghimery failed to comply with the following sections of the Code of Ethics:

Fairness, honesty, etc.

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

Dealings with other registrants

7. (1) A registrant who knows or ought to know that a person is a client of another registrant shall communicate information to the person for the purpose of a trade in real estate only through the other registrant, unless the other registrant has consented in writing.

Error, misrepresentation, fraud, etc.

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

Unprofessional conduct, etc.

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

AGREED PENALTY

The Respondent understands and agrees to the following penalty:

To pay a fine of **\$20,000.00** on or before **December 31, 2024**.

Respondent acknowledgements:

1. I acknowledge that I have read and understand the penalty outlined herein and agree to the said terms and/or conditions.
2. I acknowledge my right to seek legal counsel in this matter before signing this agreement.
3. I agree, understand, acknowledge and consent to waiving my right to a hearing before the Discipline Committee.

Waiver of hearing before the Discipline Committee:

4. The parties consent to disposing of the matter without a hearing before the Discipline Committee and agree to the terms set out herein.
5. The parties request an Order from the Chair of the Discipline Committee that includes this Agreement of Facts and Penalty as a final settlement of this matter.

By signature below the Parties agree, acknowledge, understand and consent to the final settlement of this matter by way of this Agreed Statement of Facts and Penalty.

[The Agreed Statement was duly signed by the Parties.]

DECISION OF THE CHAIR

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee (*REBBA 2002*) concluded that the Respondent breached Sections 3, 7(1), 38 and 39 of the *REBBA 2002* Code of Ethics. The Chair of the Discipline Committee (*REBBA 2002*) is also in agreement with the joint submission of the Parties as to penalty and accordingly makes the following order:

1. JIMMY GHIMERY is Ordered a Fine of \$20,000.00 payable to RECO on or before December 31, 2024.

[Released: July 12, 2023]