



**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 -

JINGHUI DU registered as AMY DU

DISCIPLINE DECISION AND REASONS FOR DECISION

The Panel held a videoconference on February 7, 2025, to discuss the written submissions by all Parties with respect to Penalty and Costs. The Panel decided as follows:

ORDER: Fine of \$12,000.00 payable to RECO within 180 days of RECO sending this decision.

Successful completion by the Registrant of the Real Estate Institute of Canada “REIC 2600: Ethics and Business Practice” course, with 180 days of RECO sending this decision.

COSTS AND EXPENSES: No costs awarded.

WRITTEN REASONS:

REASONS FOR DECISION
PENALTY & COST

INTRODUCTION

On February 7, 2025, the Panel of the Discipline Committee (the “Panel”), consisting of Mary Popat, Lisa Johnson and Devon Saunders, met by video conference, to review the written Submissions of the parties, on the issues of Penalty and Costs. Independent Legal Counsel to the Panel, Nicolette Holovaci was present.

Submissions for the Registrar were received from Chantel Marler, Counsel for the Registrar (“Counsel for RECO”).

No Submissions were received from the Respondent, Jinghui Du (“Du” / “Respondent” / “Registrant”).

The Panel confirms that neither party made any request for Costs.

SUBMISSIONS FOR THE REGISTRAR:

Counsel for RECO submitted that the Discipline Committee determined in its findings that the Respondent had contravened Sections 3 and 39 of Ontario Regulation 580/05 (the “Code of Ethics”), to the *Real Estate and Business Brokers Act, 2002* (“the Act”), which was in effect at the time of the actions that led to this Disciplinary Proceeding.

Furthermore, Counsel for RECO submitted that Section 21(4) of the Act sets out the options available to the Panel in making an order on Penalty.

The available options in this instance are:

1. imposing a fine to be paid by the Registrant in an amount which the Panel considers appropriate; and
2. requiring the Registrant to take educational courses.

With the foregoing, RECO is seeking the following Penalty:

- a) An Order that Du pay a fine of \$12,000.00, payable within 180 days of the Final Decision of the Panel.
- b) An Order that Du successfully completes the Mandatory Continuing Education (MCE), Introduction to the *Trust in Real Estate Services Act, 2002* (TRESA) training and provide RECO with proof of successful completion with 180 days of the Decision of the Panel.

The Panel relied on the following to arrive at its decision on Penalty:

1. Written Submissions from Counsel for RECO;
2. RECO’s Book of Authorities; and
3. The Discipline Decision and Reasons for the Discipline Decision.

RECO submits that the following factors have been established as a guide for the Panel in determining an appropriate penalty for breaches of the Code of Ethics (*Registrar v. Suzette Thompson*, Appeals Committee of RECO, May 31, 2012), and the Panel should take these guiding factors into consideration in making its decision:

- a) The nature and gravity of the breaches of the Code of Ethics;
- b) The role of the offending member in the breaches;
- c) Whether the offending member suffered or gained because of the breaches;
- d) The impact of the breaches on the complainant or others;
- e) The need for there to be specific deterrence to protect the public;
- f) The need for there to be general deterrence to protect the public;
- g) The need to maintain the public's confidence in the integrity of the profession;
- h) The degree to which the breaches are regarded as being outside the range of acceptable conduct; and
- i) the range of sanctions in similar cases.

In relation to the said factors, RECO's submissions on each factor are as follow:

a) ***The Nature and Gravity of the Breaches***

RECO's submits that the nature and gravity of the breaches of the Code of Ethics fall towards the serious end of the spectrum. The breach involved unauthorized access to a tenanted property, which is a serious and dangerous invasion of privacy.

The breach put the tenant in a vulnerable position with unexpected visitors in their home. In addition, the breach not only violates professional standards but raises security concerns, because unauthorized entry can create fear, distrust and potential physical risk to tenants and residents, impacting their sense of safety. Furthermore, the unauthorized access and entry also exposed the sellers to significant liabilities.

Du disregarded her obligations as a registrant, to respect and protect the trust, privacy, and property, 1-A Street, City A, ("the Property") of a seller – an obligation that is well known in the real estate profession and which has been the subject of significant attention and publicity.

b) *The Role of the Registrant in the Breaches*

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

As such, RECO submits that Du's role was central because the breaches were directly the result of Du's actions and/or omissions. Du purposefully and knowingly accessed the lock box and entered the Property with her client without an appointment or permission.

Du held primary responsibility for adhering to the appointment system, ensuring communication with the Listing Representative and protecting the tenant's privacy. By neglecting to verify and confirm the showing appointment, Du bypassed safeguards that protect both the tenants and her own clients.

c) *Whether the Registrant Suffered or Gained, as a Result of the Breaches*

RECO submits that Du stood to gain financially from the conduct, since securing the purchase of the Property on behalf of her client would result in a commission.

d) *The Impact of the Breaches on the Complainant or Others*

RECO submits that the impact on the Complainant and potential buyers was significant because the unauthorized access was a serious invasion of the tenant's right to privacy, breaching their security and potentially endangering their safety by exposing them to unknown individuals entering their private space.

Furthermore, Du's clients were denied a full showing experience. They were unable to assess the Property, which is a critical component of their purchasing rights.

e) *The Need for Specific Deterrence*

RECO submits that a significant penalty is essential to deter Du from continuing this type of conduct, particularly in light of the fact that this is not Du's first instance of unauthorized access in a real estate transaction.

Despite having previously received a warning for similar conduct, Du has not changed her behaviour and has chosen to repeat it. Furthermore, as noted in the decision, Du spent time attempting to justify, minimize and excuse her actions rather than take accountability.

RECO reiterates that the penalty needs to illustrate to Du that her actions fell far below the standard expected of a real estate professional.

f) ***The Need for General Deterrence***

RECO submits that the principle of general deterrence requires that the penalty imposed should deter *other registrants* from engaging in similar conduct to Du.

RECO further submits that the penalty imposed by a discipline committee is a communication to the profession about a) what conduct is inappropriate, and b) the severity of different types of breaches of the Code of Ethics.

In this case, the penalty imposed by the Panel is critical in its role of promoting general deterrence.

Without a substantial penalty, there is a risk that other professionals may be encouraged to take similar shortcuts, endangering and impacting clients, tenants and property owners alike.

RECO submits that it is essential to emphasize to all real estate professionals that unauthorized access constitutes a serious breach with significant and potentially dangerous consequences.

g) ***The Need to Maintain the Public's Confidence***

RECO submits that the findings of the Panel show that Du breached provisions of the Code of Ethics that are specifically directed at ensuring continuing public confidence in the profession.

RECO further submits that a primary consideration in imposing a penalty for unprofessional conduct is the collective reputation of the profession, which includes the legitimacy of the profession's ability to self-regulate its members.

Further, the public should have confidence that when they retain and engage with real estate professionals they will be treated fairly, conscientiously, and in accordance with the rules by all real estate professionals involved in the transaction.

In addition, it is RECO's submission that the public should have confidence that when a registrant breaches the ethical standards of the profession, the self-disciplinary system will appropriately address the breaches.

h) *The Degree to Which the Breaches are Outside the Range of Acceptable Conduct*

RECO submits that this factor requires the Panel to assess where Du's actions fall on a sliding scale of misconduct, from least serious to most serious.

It is RECO's position the misconduct in this case falls towards the serious end of the spectrum of conduct that is outside the range of what is acceptable, since Du ignored her obligations to the members of the profession and the public.

Du's actions: gaining unauthorized access, neglecting to confirm the appointment with the Listing Representative, deflecting accountability by claiming an error and later attributing malice to the Complainant, tenant, all reflect a pattern of conduct far outside acceptable conduct of real estate professionals.

i) *The Range of Sanction in Similar Cases*

RECO submits that previous Decisions of the Discipline Committee are helpful as a guide to assist the Panel in determining the appropriate penalty in this matter.

Therefore, a comparison of similar cases is an important factor when considering the appropriateness of a disciplinary penalty.

In this instance, there are many decisions of the Discipline Committee which involve the improper use or disclosure of lock box codes and unauthorized and/or unsupervised access to a property.

RECO notes that most of these types of cases have been resolved by way of an Agreed Statement of Facts and Penalty (“**ASFP**”) and notes that an ASFP Decision is helpful, even if it does not carry the weight of a Decision made by a Panel that heard the evidence of the parties. RECO submits that when a prosecutor and a registrant negotiate a penalty for an ASFP the prosecution takes the respondent’s willingness to resolve the dispute and avoid a hearing as a *mitigating* factor (note – a Respondent’s refusal to settle is **not** an *aggravating* factor). It is, however, ultimately up to a Discipline Panel to decide the appropriate penalty given the facts of a case.

RECO submits four (4) comparable decisions involving unauthorized access and/or releasing lockbox codes:

				Penalty	Penalty
Date of Decision	Registrant	ASFP/Decision	Sections	Fine	Courses
2023-11-16	Vinesh Kaliga	ASFP	3, 5, 38, 39	\$10,000	RECO's Compliance in Ethics (Parts 1 & 2)
December 15, 2022	Mahalingam, Jancy	Hearing Decision	3, 39	\$9,000	RECO's Compliance in Ethics (Parts 1 & 2)
November 11, 2022	Rahman, Mahammed Fazlur	Hearing Decision	3, 5, 38, 39	\$8,500	RECO's Compliance in Ethics (Parts 1 & 2)
February 20, 2019	Varughese, Paulose	ASFP	3, 5, 38, 39	\$10,000	RECO's Compliance in Ethics (Parts 1 & 2)

As illustrated from these cases, the penalty for this type of infraction has been a fine between \$8,500.00 and \$10,000.00 and often, a requirement to complete an education course.

For the reasons illustrated in the findings and the other factors as set out above, RECO submits that the penalty in this case should be at the higher end of the spectrum.

Further, RECO suggests that penalties imposed by way of a settlement take that resolution into account as a ***mitigating*** factor which may result in a reduced penalty for a Respondent (the discount reflecting that the registrant has accepted some responsibility for their actions and, in addition, saved the time and costs that would otherwise be expended on a contested Hearing).

RECO further submits that in the *Mahalingam* decision, a Panel of the Discipline Committee ordered a fine of \$9,000 and the completion of the RECO Compliance in Ethics courses in a misuse of lock box case.

RECO submits that the penalty in this matter should be similar or higher to that of the *Kaliga* case for two reasons: First, because in Du's case (like the *Mahalingam*, 2022 case) there is the aggravating factor of a registrant failing to take responsibility or accountability for the conduct.

Second, because the penalty imposed in *Mahalingam*, was one of the more recent Decisions involving similar facts which was heard before the Discipline Committee in a Hearing.

RECO further submits that the *Act* and regulations thereunder, effective as of December 14, 2017, included an increase to the *maximum fine* the Discipline Committee may impose, doubling it from \$25,000 to \$50,000. These changes, it is submitted, represent an evolution in professional standards which directly flowed from a change in the "public mores".

SUBMISSIONS FOR THE RESPONDENT

The Panel reiterates that it did not receive any Submissions from the Respondent.

The Panel's Application of the Penalty Factors to this case:

a) *The Nature and Gravity of the Breaches*

The Panel finds that the nature and gravity of the breaches of the Code of Ethics is at the serious end of the spectrum.

The breach involved unauthorized access to a tenanted residential property which is a serious invasion of privacy.

Unauthorized access to a residence goes to the core of a person's right to a reasonable expectation of privacy and it infringes that right.

The Panel agrees that Du disregarded her obligations as a registrant, to respect and protect the trust and privacy of the seller and the tenant and to protect the Property, and thus, having regard to all circumstances, Du's actions would reasonably be regarded as unprofessional and unbecoming of a registrant.

The Panel further hastens to agree that, not only did Du violate professional standards but her actions raised security concerns, because unauthorized entry to any property can create fear and distrust, impacting the sense of safety of occupants and owners alike and also exposing them to unwanted and unsolicited liability risks.

b) *The Role of the Registrant in the Breaches*

In considering this factor, the Panel looks at the Registrant's role in relation to the breaches (i.e. central vs peripheral) and considers whether the Registrant's conduct was active/deliberate versus more negligent in nature.

In so doing, the Panel concludes that the Respondent's role was central because the breaches were directly the result of the Respondent's actions, and the Panel further finds that her role was active and deliberate.

In her testimony at the Hearing, the Respondent admitted that she accessed the Property at the unauthorized time because her buyer client was available at that time. This admission in itself is an aggravating factor considered by the Panel.

The Panel agrees with RECO, that the Respondent held primary responsibility for adhering to the Appointment System and ensuring communication with the Listing Representative. She was also responsible for protecting the tenant's privacy rights, the rights of the seller and the rights of all others who her actions could have impacted.

The Panel highlights that the Appointment System is one of the 'guard rails' which protects all parties in a real estate transaction and in the instant matter, the Respondent breached this safeguard.

c) ***Whether the Registrant Suffered or Gained as a Result of the Breaches***

The Panel concludes that, though the Respondent did not gain financially from the conduct, she did have the potential to gain.

Had the Respondent secured the purchase of the Property on behalf of her client, it definitely would have resulted in her earning a commission.

d) ***The Impact of the Breaches on the Complainant (Tenant) or Others***

The Panel agrees with RECO and finds that the impact of Du's actions on the Complainant and on Du's potential buyer client was significant.

Firstly, the unauthorized access was a serious invasion of the Complainant's right to privacy. The Panel heard the testimony of the Complainant, that, even prior to the Respondent's unauthorized entry, the Complainant had installed security cameras at her own expense, because the Complainant had concerns regarding her safety. The unauthorized entry materialized the Complainant's safety and security fears.

Secondly, there was a profound negative impact on the Complainant as a result of a series of 'harassing' actions by the Respondent including trying to contact the Complainant after the Complaint was made to RECO. The Respondent tried to

contact the Complainant via social media and email, but the Complainant did not respond. In addition, the Respondent went further and contacted the Complainant's employer which caused great stress for the Complainant. The Complainant was so overwhelmed by the 'harassing' behaviour by the Respondent that the Complainant reported the matter to the police.

The Panel finds such 'harassing' behaviour by the Respondent to be an aggravating factor.

The Panel also finds that the buyer client of the Respondent was negatively impacted because the potential buyer did not get the benefit of fully viewing the Property.

e) ***The Need for Specific Deterrence***

The Panel agrees that the Penalty in this matter needs to be sufficiently meaningful so as to inhibit the Respondent from recommitting the offence in the future.

The Panel further agrees that the Penalty should be significant enough to deter the Respondent from continuing this type of conduct, particularly in light of the fact that this is not the Respondent's first instance of unauthorized access into a property during the course of dealing in a real estate transaction.

The Panel finds that the Respondent never acknowledged or accepted her conduct. Despite having previously received a warning for similar conduct in 2023, the Respondent attempted to justify, minimize and/or excuse her actions rather than take accountability.

The Panel cannot over emphasize the importance of ensuring that the Penalty in this case, ought to be sufficient to ensure that the Respondent does not repeat such behaviour in future.

f) ***The Need for General Deterrence***

The Panel agrees with the Registrar that the Penalty imposed should deter other registrants from engaging in conduct similar to the Respondent's.

The Panel agrees that the Penalty must send a strong message which is loud and clear to all registrants, that unauthorized access to a property constitutes a serious breach, with significant and potentially serious consequences and that this conduct will not be tolerated in the profession.

g) ***The Need to Maintain the Public's Confidence***

The Panel agrees that the Respondent breached provisions of the Code of Ethics that are directed at ensuring public confidence in the profession and further acknowledges that a primary consideration in imposing a penalty for unprofessional conduct is the collective reputation of the profession. This consideration includes the legitimacy of the profession's ability to self-regulate its members.

In applying this factor and arriving at its conclusions, this Panel considers that the Penalty imposed must be of such significance as to also maintain the public's confidence in the real estate profession. Furthermore, the public ought to be able to have confidence that when they retain and engage with real estate professionals, they will be treated fairly and conscientiously and in accordance with the established rules of the profession.

h) ***The Degree to Which the Breaches are Outside the Range of Acceptable Conduct***

In applying this factor, the Panel assesses the facts to determine where the Respondent's actions fall on a sliding scale of misconduct, from least serious, to most serious.

The Panel agrees that the Respondent's misconduct, including unauthorized entry of the Property, deflecting accountability by claiming an error and later attributing malice to the Complainant, fell far below the acceptable standard and as such, breached obligations to the members of the profession and the public.

With the foregoing, the Panel agrees with RECO's position that the misconduct in this case falls towards the serious end of the spectrum of conduct that is outside the range of what is acceptable for real estate professionals.

i) ***The Range of Sanction in Similar Cases***

The Panel, in arriving at its Penalty, takes into consideration, previous Decisions of the Discipline Committee, because it sees previous Decisions as helpful guides to help the Panel in determining the appropriate Penalty. In so doing, the Panel tries its best to take into account similar cases when considering the appropriateness of this disciplinary penalty.

In reviewing and assessing the four (4) previous Decisions submitted by RECO, the Panel identifies the *Mahalingam* Decision as one of the more recent decisions involving similar facts (misuse of lock box to gain entry to a property) which was heard before a Discipline Panel in a Hearing.

In the *Mahalingam* Decision, the Discipline Panel ordered a penalty consisting of a fine of \$9,000.00 and the completion of the RECO Compliance in Ethics course. The Panel also considered the *Kaliga* Decision which proceeded by way of ASFP where the Panel ordered a fine of \$10,000 and completion of RECO's Compliance in Ethics course.

The Panel also acknowledges RECO's submission that the penalty in this case should be similar or higher to that of the *Kaliga, 2023* case for two reasons:

- i. because in this matter (like the *Mahalingam* case) there is the aggravating factor of a registrant failing to take responsibility or accountability for their conduct; and
- ii. because the penalty imposed in *Mahalingam* was one of the more recent Decisions involving similar facts which proceeded to a Hearing before the Discipline Committee.

The Panel also takes into consideration the increase to the *maximum fine* the Discipline Committee may impose which doubled from \$25,000.00 to \$50,000.00, effective December 14, 2017. The Panel recognizes that this change represents an

evolution in professional standards which directly flowed from a change in the “public mores”.

PENALTY

The Panel is mindful that the Act 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, buyers and sellers and registrants alike.

The Panel considered the monetary penalty proposed by RECO and the *educational* component of the Penalty recommended by RECO.

Regarding the monetary penalty, the Panel is in agreement with RECO that the penalty imposed here should be higher than the previous Decisions referred to particularly because Du had been warned about this exact conduct in 2023 and yet chose to repeat the conduct and further, despite her admitting during her testimony at the Hearing that she entered the Property without authority, Du refused to accept responsibility for her actions.

Regarding the educational penalty component requested by RECO, after careful assessment, the Panel has determined that the 'Introduction to the *Trust in Real Estate Services Act, 2002* (TRESA) training' suggested by RECO is a mandatory training required by RECO and therefore, this Panel is of the view that it will not have the required and intended deterrent effect.

With the foregoing, the Panel finds it is appropriate that the Registrant completes a non-mandatory course which will enhance the Registrant's knowledge and professional acumen. The Panel therefore has determined that the 'Real Estate Institute of Canada (REIC) 2600: Ethics and Business Practice' course is a more appropriate educational penalty component and will better serve the intended purpose.

The Panel has considered all the written material submitted and has unanimously concluded that the following Penalty is appropriate:

1. Jinghui Du is ordered to pay a fine of \$12,000.00 to be payable within 180 days;
and
2. Jinghui Du is ordered to successfully complete the course, Real Estate Institute of Canada REIC 2600: Ethics and Business Practice within 180 days.

[Released: March 12, 2025]



Real Estate Council of Ontario

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

BETWEEN:

REAL ESTATE COUNCIL OF ONTARIO

- AND-

JINGHUI DU registered as AMY DU

DISCIPLINE DECISION AND REASONS FOR DECISION

APPEARANCES:

For the Registrant:

Unrepresented

For the Real Estate Council of Ontario: Chantel Marler, Paralegal

Heard in Toronto on:

July 30, 2024

FINDINGS:

In violation of Sections 3, and 39 of the Code of Ethics.

ORDER:

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

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

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

Any inquiries relating to the delivery of the above-mentioned documents should be directed to the Hearings Coordinator.

COSTS AND EXPENSES:

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

WRITTEN REASONS:

REASONS FOR DECISION

INTRODUCTION

This Hearing took place on July 30, 2024, in the presence of Jinghui Du registered as Amy Du (the “Respondent” and/or “Du”). Individual A, Mandarin Interpreter, was the interpreter for Respondent. Du was self-represented. Chantel Marler, Paralegal for the Real Estate Council of Ontario. The Discipline Panel was comprised of Mary Popat, Lisa Johnson and Devon Saunders. Nicolette Holovaci was present as Independent Legal Counsel to the Discipline Panel.

ALLEGATIONS BY THE REGISTRAR, REBBA 2002

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

- A. Du accessed property municipally known as 1-A Street, City A (“the Property”) without authorization by attending the Property without a scheduled showing and accessing the lockbox to gain access to the Property, contrary to sections 3 and 39 of the Code of Ethics.

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

Fairness, honesty, 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.

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.

PRELIMINARY MATTERS

Concern Expressed by the Respondent regarding the Amended Allegation Statement

An Amended Allegation Statement was filed by Counsel for RECO, which cured the defect of the incorrect Complaint Date set out in the original Allegation Statement. The original Allegation Statement in section A. PARTICULARS, Paragraph 2, inadvertently indicated that, on or about November 13, 2023, Individual A sent the Complaint to RECO. The Amended Allegation Statement includes the correct Complaint Date of August 3, 2023. The original and Amended Allegations Statements were marked as Exhibits in this Hearing.

The Respondent contended that she did not receive the Amended Allegation Statement on time and should have received it from RECO on May 13, 2023, instead of July 17, 2023. She also complained that she received an Allegation Statement in August 2023, which was very late, and it was not until after a RECO Supervisor got involved. The Respondent further contended that she suffered a lot physically, mentally and otherwise.

Counsel for RECO countered that the original and amended Allegation Statements were sent to the Respondent on time and the Respondent was aware of the correction to the Complaint Date at the Pre-Hearing.

The Respondent confirmed that Counsel for RECO told her that the November 13, 2023, date in the original Allegation Statement was a mistake.

The Panel accepted the submission of Counsel for RECO that the amendment is not prejudicial because the correct date was in all the documents disclosed to the Respondent and the defect in the original Allegation Statement was brought to the Respondent's attention prior to the Pre-Hearing. Therefore, the defect in the original Allegation Statement was known by the Respondent.

The Respondent confirmed that she received all disclosure and advised the Panel that she was willing to proceed with the Hearing at this time despite this issue.

The amendment did not change the allegations made against the Respondent in any way and had no impact on the Respondent's ability to defend against the allegations.

The Panel accepted the Amended Allegation Statement and proceeded with the Hearing.

EVIDENCE OF THE PARTIES

The following Exhibits was tendered by the parties:

- 1) Allegation Statement dated March 10, 2024
- 2) Amended Allegation Statement dated July 15, 2024
- 3) Notice of Hearing dated July 25, 2024
- 4) RECO Book of Documents dated May 1, 2024
- 5) Amy Du – Submissions dated June 30, 2024

WITNESSES FOR THE REGISTRAR, REBBA 2002

- 1) Individual A
- 2) Registrant A

WITNESSES FOR THE RESPONDENT

- 1) Individual C
- 2) Amy Du

OPENING SUBMISSIONS FOR THE REGISTRAR, REBBA 2002

The Panel heard the Submissions from Counsel for the Registrar, regarding the allegations against the Respondent.

The Prosecution submitted that the Respondent accessed the Property without authorization, by attending the Property without a scheduled showing and accessing the lock box, to gain access to the Property, contrary to Sections 3 and 39 of the Code of Ethics.

Counsel for the Registrar submitted that this was a very simple issue. It was noted in the MLS® System Listing that the Property was tenanted and required 24 hours' notice for appointments.

The Respondent, who represented clients who were interested in the Property, was provided with a confirmation on August 2, 2023, for a showing appointment for the Property on August 4th at 4:45 p.m. Nonetheless, the Respondent entered the Property with her clients on August 3, 2023, at approximately 4:03 p.m.

The Prosecution stated that the fact that Du entered the Property using the lockbox without authority was uncontested and, as such, Du violated sections 3 and 39 of the Code of Ethics as alleged in the Amended Allegation Statement.

OPENING SUBMISSIONS OF THE RESPONDENT

The Respondent submitted that when she entered the Property, she thought her time was correct. She also suggested that the video footage which appears in Exhibit 3 was deliberately muted and put on fast speed to prevent hearing the conversation and seeing the facial expressions.

REGISTRAR'S CASE

Counsel for the Registrar called upon 2 witnesses, Individual A, the Tenant and Complainant and Registrant A, the Listing Agent representative from Brokerage A.

PROSECUTION FIRST WITNESS – INDIVIDUAL A

Individual A testified that she worked in Communications at a Hospital, that she was the tenant at the Property, and she was the Complainant. Individual A confirmed that she received notice of a showing appointment for August 4, 2023, at 4:45 p.m. She testified that the Respondent entered the Property on August 3, 2023, at approximately 4:03 p.m. She identified the video footage from that day (Exhibit 3).

Individual A was at home (at the Property) when the Respondent arrived and confronted the Respondent on the basis that no appointment was scheduled for that time. Individual A stated that the correct day and time was on the Respondent's paperwork which she had in her hand. Individual A asked the Respondent to leave the Property and return at the scheduled time, which was August 4, 2023, at 4:45 p.m.

Individual A said that Du told her that she had wanted this viewing time because her client wanted to come at this time, but it was unavailable when she booked her appointment. Du told Individual A that this was the "preferred time" for her clients. Individual A also testified that when she raised concerns about people coming when she was home without an appointment Du said that she was a realtor, so it was "no big thing".

The Respondent told Individual A, that the client was available at that time but would return at her scheduled time, the following day. Individual A testified that the Respondent exited the Property 6-7 minutes after entering. Individual A then contacted her Landlord and Registrant A to communicate what had happened.

Later that day, Individual A contacted RECO to file a Complaint. Individual A noted that in March 2024, Du tried to reach out to her via Facebook and emailed her workplace and attended her place of work using a fabricated name to get in touch with her. Individual A called the Police Help Line to notify them what had taken place.

On Cross-examination Individual A agreed that Du did apologize for attending the Property when she did not have an appointment, and she agreed as well that Du eventually left the Property advising that she would return at her proper appointment time.

On Re-Examination Individual A confirmed that the video evidence came from a video camera that she personally purchased and installed for her safety and security. She stated that it was motion activated and had no audio function. She also confirmed that the time stamp on the video was accurate.

PROSECUTION WITNESS 2 – REGISTRANT A

Registrant A confirmed as per MLS® System Listing that all appointments needed 24 hours' notice because the Property was tenanted. Registrant A confirmed that Brokerage A uses an appointment booking system called Broker Bay. Registrant A confirmed that the Respondent's appointment for a showing of the Property was confirmed for August 4, 2023, at 4:45 p.m. She also testified that the scheduled appointment was later cancelled through Broker Bay, on August 3, 2023, because the Property had sold and there would be no more showings.

CASE FOR THE DEFENCE

WITNESS 1 – INDIVIDUAL B

Individual B testified that he was the son of the potential buyer represented by Du. He said he was present on August 3 with Du when she used the lockbox and entered the Property. He said that they were confronted by Individual A, the tenant, who told Du that this was not her appointment time and asked her to come back at the proper time. Individual B stated that Du apologized and agreed to return. He testified that he and Du then left the Property.

WITNESS 2 - DU, THE RESPONDENT

Du stated that Individual A edited the video which appears in Exhibit 3. She said there was no evidence about the conversation she had with Individual A on August 3, 2023, before the Panel.

Du testified that her entry to the Property was not intentional. Her appointment was scheduled for August 4, 2023; however, her client was available on August 3, 2023, therefore she entered the Property using the lock box code but realized only after Individual A approached her, that she had the incorrect appointment time and date.

She testified that on August 2, 2023, at approximately 11:00 p.m., she made the request to view the Property on August 3, 2023, but that time was unavailable due to 24 hours notice being required.

Du said she experienced a lot of physical, mental, and financial suffering and this demotivated her from working. She said the Prosecution made a lot of mistakes. She said she admitted that she entered the Property at a time that was not authorized but she said it was not intentional.

When asked by the Panel, Du admitted that she did receive the Notice of Hearing and she at no point objected to this Hearing. She also said she “could not accept the smirk on the face of the tenant” so she decided to proceed with the Hearing before the Panel.

PROSECUTION’S CLOSING SUBMISSIONS

The Prosecution submitted that the evidence of all of the witnesses including the evidence of the Respondent, which was corroborated by video evidence, proved that Du accessed the Property without authorization by attending the Property without a scheduled showing and accessing the lockbox to gain access. As such, the Prosecution submitted that Du breached Sections 3 and 39 of the Code of Ethics.

RESPONDENT’S CLOSING SUBMISSIONS

The Respondent submitted that the dispute is:

- i. whether her entry was intentional or not intentional, or
- ii. whether Individual A made the Complaint out of bad intention.

The Respondent said she sent an appointment request at almost 11:00 p.m. when it was too late for a phone call to get a showing on August 3.

The Respondent again questioned the veracity of the Prosecution’s evidence. Regarding Individual A, she reiterated that she apologized for her mistake and the apology was accepted. She said that Individual B turned off audio on the video and speed it up so voices could not be heard, and facial expressions could not be seen. She reiterated that the tenant was motivated by not wanting to move. She alleged that Individual A’s Complaint was based on bad intentions.

The Respondent expressed concern that the Listing Agent provided incomplete evidence to the Panel and that the Broker Bay and the *viva voce* evidence were contradictory. Her concern was that the Listing Agent disabled the showing time at 3:00 p.m. on Friday afternoon but she cancelled at 10:00 a.m. on Thursday, August 3, 2023. Therefore, the Listing Agent should have been able to see who cancelled and should have also told her that the Property was sold conditionally, therefore she would not have gone to the Property.

The Respondent further stated that on August 3 as soon as she apologized to Individual A and Individual A accepted the apology, she exited the Property. She pointed out that Individual A admitted to receiving the apology and even told her to return on Friday to view the Property. Individual A also admitted that it was a friendly conversation. However, the Complaint letter said Individual A confronted the Respondent and failed to mention the apology and that Individual A told the Respondent to return on Friday.

The Respondent reinforced that she did not intentionally enter the Property on Thursday, August 3, 2023, because she was with the said client on Friday, August 4, 2023, the date of the original showing appointment, therefore she had no need to be there one day earlier.

The Respondent further testified that Individual B confirmed that he was the son of the potential buyer, (Du's client) and that he entered the Property on August 3, 2023, along with the Respondent and his parent. Individual B recalled that Individual A approached them when they were inside the house and told them that their appointment time was wrong, and they should leave. Individual B recalled that the Respondent apologized to Individual A, and they exited the house and left the Property. Individual B also knew that the August 4, 2023, appointment had been cancelled because the Property was sold.

Further, the Respondent submitted that she cannot trust the credibility of the witnesses. The video evidence shows that she entered the Property without authorization but apologetically left less than two minutes later but Individual A removed the audio and

sped up the video to prevent others from seeing and hearing, whether the conversation was friendly.

The Respondent submitted that Individual A filed the complaint probably because she had bad intentions towards the Respondent in that she may have had a low rent and did not want to move from the Property, because that would involve lots of effort to find a new place.

The Respondent submitted that RECO protects the public interest, and this is the reason why RECO has this Hearing procedure. Further, she (the Respondent) is part of the public and needs protection. Further, she stated that her English skill, lack of knowledge and the inability to afford a paralegal have impacted on her mental state and her motivation. As such, she has suffered a lot. She said she is looking for a fair and transparent decision from the Panel.

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 conclusions set out below.

The Panel has taken into consideration all evidence germane to the allegations made in the Amended Allegation Statement and has made a Decision, on that basis.

The Panel finds that the oral evidence given by all witnesses at the Hearing convincingly shows that the Respondent accessed the Property without authorization by attending the Property without a scheduled showing and accessing the lock box to gain access to the Property. This was corroborated by the video evidence from the day in question (Exhibit 3). Further, the Respondent in her own evidence admitted this fact. The Panel finds that in light of this overwhelming evidence, the Prosecution has proven the allegation set out in paragraph A of the Amended Allegation Statement.

The Panel finds that the evidence of the Tenant (Complainant), Individual A, was credible and cogent and painted a full picture of what transpired at the Property at the material time.

The Panel has concluded that the Respondent's *viva voce* evidence was not always clear, showed inconsistencies and was contradictory. The Respondent testified and admitted that she entered the Property at an unauthorized time. She testified that she accessed the Property because it was a preferred time for her clients, and she felt it would be in order or allowable to enter.

The Panel finds that, overall, the Respondent engaged in unprofessional and unbecoming behavior. The Respondent was aware that the Property was tenanted but still gained unauthorized access which impinges upon the resident's / tenant's privacy rights which therefore affects the trust that the public should have in real estate professionals.

The Panel emphasizes the importance of unauthorized real estate transaction/property visits and the expectation of privacy of occupants of a residence because this goes to the heart of dealing fairly and honestly with everyone involved in a real estate transaction.

The Panel emphasizes that there is a reason why there is an appointment system in place to ensure that sellers, occupants and tenants of a property are aware that strangers will be entering their private space, so that they can prepare themselves. In addition, buyers get a fair opportunity to fully view the property, so that they can make an informed buying decision.

Buying a home is probably one of the most important buying decisions in a person's life and real estate professionals must ensure that all parties dealt with during the course of real estate transactions are treated fairly and with respect and integrity.

The Panel recognizes the Respondent's submission that she tried to change the showing appointment time but finds that the Respondent did not do enough to ensure that the new appointment was communicated to all concerned and was confirmed.

The Panel finds that, as a professional and armed with the information that the Property was tenanted, the very least the Respondent could have done was to ensure that the showing was properly booked and confirmed and to communicate with the Listing Agent before proceeding to enter the Property.

The Respondent's testimony clearly informs the Panel that she knew or ought to have known the correct time of her scheduled appointment.

The Panel finds that Du did not treat the tenant, Individual A, fairly, honestly and with integrity. Furthermore, the Panel finds that the Respondent did not treat her client fairly, as the client did not get to see the Property because their time was cut short, due to the unscheduled appointment. The unauthorized access caused the client to leave the Property, without the benefit of a full showing.

The Panel finds that, based on the constellation of evidence provided, and on a balance of probabilities, the allegation against Du has been proven, namely that she accessed the Property without authorization, by attending the Property without a scheduled showing and accessing the lockbox to gain access to the Property.

As such, the Respondent breached the following sections of the Code of Ethics:

1. Section 3, Fairness, honesty, etc.

Du, a registrant under the *Real Estate and Business Brokers Act, 2002*, failed to treat the parties to the subject real estate transaction fairly, honestly and with integrity by accessing the Property without a proper appointment and without authorization, thus disturbing the peaceful occupancy of the tenant and not affording her client a fair opportunity to view the Property.

2. Section 39, Unprofessional conduct, etc.

Du, a registrant under the *Real Estate and Business Brokers Act, 2002*, engaged in conduct as described above (accessing the Property without authorization by attending without a scheduled appointment and accessing the lockbox to gain entry) which having regard to all of the circumstances would reasonably be regarded as unprofessional and unbecoming a registrant.

SUBMISSIONS REGARDING 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.

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.

[Released: October 24, 2024]