



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 -

PINAKIN SURESHBHAI PATEL (registered as PINAKIN PATEL)

DISCIPLINE DECISION AND REASONS FOR DECISION

The Panel held a videoconference on December 17, 2024, to discuss the written submissions by all Parties with respect to Penalty and Costs. The Panel decided as follows:

ORDER:

Fine of \$17,000.00 payable to RECO within 180 days of RECO sending this decision.

Successful completion by the Registrant of the Parts 1 and 2 of the RECO Continuing Education course in Compliance and Ethics in Real Estate, within 180 days of RECO sending this decision.

WRITTEN REASONS:

REASONS FOR DECISION
PENALTY & COSTS

INTRODUCTION

The Penalty Hearing was held on December 17, 2024, in the matter of RECO v. Pinakin Patel.

Following submissions by the Registrar's counsel ("Prosecutor") and by Patel ("Registrant") with respect to the penalty in this matter, the Panel reviewed and discussed

the submissions. The Panel noted the huge gap between the Registrant's proposal of a penalty of \$2,000-\$3,000 and the Prosecutor's submission of \$17,000 plus certain educational requirements. Given the gravity of the infractions, the Panel has found that the Registrant's penalty proposal is neither convincing nor warranted.

In deliberating the appropriate sanction in this case, the Panel relied on the factors identified in the Suzette Thompson decision to assess Patel's actions. The Thompson case includes an analysis of the following factors:

- Nature and gravity of the breaches
- Role of the offending member in the breaches
- Whether the offending member suffered or gained as a result of the breaches
- Impact of the breaches on the complainant and others
- Need for specific deterrence to protect members of the public
- Need for general deterrence to protect members of the public
- Degree to which the breaches are regarded as being outside the acceptable range of conduct
- Range of sanction in similar cases.

In its Penalty Submissions, the Prosecutor provided a thorough analysis of the factors in the Thompson case as they applied to Patel's actions and his impact on the persons with whom he had dealt.

In doing so, the Prosecutor maintained that a failure to disclose commission reduction agreements is a failure to protect consumers, which is what occurred in this case. It was also the Prosecutor's position that by not complying with ethical obligations, Patel 'undermined public trust in property transactions and respect and trust for realtors.' Given the totality of evidence with respect to the breaches of the Code of Ethics, the Prosecutor asserted that Patel's actions fell within the moderate to high range of severity.

The Registrar's Book of Authorities provided decisions that were being relied on to support its submissions on penalty. For the most part, those decisions involved the imposition of penalties in the range of \$10,000-\$15,000. In many of those decisions, the registrants had acknowledged their role in the allegations made against them and had admitted their breaches of the Code of Ethics in an Agreed Statement of Facts and Penalty, that is, a situation where a hearing had been waived and was therefore avoided.

In his letter to the Panel on the issue of penalty, Patel submitted that a lower sanction was in order given the circumstances of his case. However, he did not provide a rationale for such an approach, including an explanation as to how his situation was different or unique from other cases involving the same or similar allegations. Indeed, the Registrant's main reasons for arguing for a lower penalty appeared to be that, in the double-ended transaction that had been concluded, he had not netted a significant amount from the sale because his own compensation had come principally from the Seller.

Further, the Registrant posited that, because his net income during the past few years had not been very high, a penalty much lower than that being requested by the Registrar would be more appropriate.

The Panel has considered but rejects these submissions. The Registrant's commission earned on the specific transaction and/or his income during the past few years have no bearing on his obligation to adhere to the Code of Ethics; as a result, those factors should not be determinative of the quantum of the sanction to be imposed upon a breach of the Code.

Patel submitted that his actions reflected an unintentional mistake on his part and a misunderstanding of his obligations. As a result, there had been no intentional, deliberate, or malicious motives underlying his behaviour. As for the nature of his breaches of the Code, which were certainly outside the acceptable range of conduct, Patel characterized his actions as a "momentary lapse in judgment" not reflective of egregious behaviour. As such, he submitted that any penalty should be on the lower end of the spectrum.

Despite the above, the Registrant had multiple roles in the transaction under review. As the listing agent, he represented the Seller, and his brokerage also represented the buyer. As a result, Patel had a regulatory and ethical duty to represent all registrants and participants fairly, but he failed to do so.

With respect to the gravity of the matter, his actions were serious given that other registrants and clients impacted by his conduct. Those who had submitted offers on the Property were entitled to expect they would have a fair chance at purchasing it.

Patel had access to, and control of the information contained in the offers submitted for the Property, but his actions clearly favoured his own interests. The public needs assurance that a two-tiered system of priorities, conduct, and interests will not arise in real estate transactions.

If such were the case, it could improperly interfere with consumer rights to truly independent and professional representation, fairness, and an even-playing field in transactions. It could also put consumers at financial and other risk.

The Panel has concluded that Patel's behaviour was deceptive in the circumstances. He is also solely responsible for his own actions and the breaches of the Code of Ethics that took place. It was the Registrant's submission that he had disclosed to all parties there *might be* a commission reduction in a successful transaction. But when a commission reduction became a reality, he did not take proper and adequate action to update all would-be buyers and their realtors of the advantages at work (i.e. actual commission reduction) in his brokerage, which was double-ending the transaction. The Panel has noted previously in its decision that if Patel had indeed advised other realtors of the possibility of a reduction in commission (in the event that his brokerage double-ended a transaction), his failure to confirm that a commission reduction agreement had actually been negotiated was simply unacceptable. Indeed, the failure to make proper disclosure resulted in other participants believing that no commission reduction agreement was in play and that everyone was operating on a level playing field, which was not the case.

In effect, Patel changed the rules of the game and did not notify other realtors, nor did he give any other would-be buyer an opportunity to improve their offer. The Panel has confirmed that such circumstances were unfair to other participants interested in the Property, while not necessarily being in the interests of the Seller. Although Patel claimed that nothing would have changed with full disclosure of the commission reduction agreement, the reality is that the outcome relating the sale of the Property could have been very different. There might have been a different buyer with additional benefits for the Seller.

With the commission reduction in place, and to the detriment of all other participants interested in the Property, the offer of the buyer from Patel's brokerage was made more lucrative to the Seller. Further, Patel stood to gain by handling both ends of the transaction. Based on the documentary evidence and testimony at the hearing, Patel reduced his commission to favour a double-ended transaction, and it was proven that he did not notify any other realtor of that reality. In short, Patel made a wilful choice not to advise anyone of the commission reduction. The Panel resolutely rejected Patel's submission at the hearing that the non-disclosure had been an oversight on his part.

Patel neglected to discharge his duty of full disclosure and transparency, which was unacceptable given his professional obligations. He withheld information that would-be buyers would ordinarily rely on to make important decisions in bidding for the Property.

The net result was that the Registrant's conduct interfered with the opportunity of other would-be buyers to purchase the Property. Patel had a duty of honesty and full disclosure in dealing with the other registrants and consumers. Patel testified that he is an experienced representative. As such, he would have and should have known that providing inaccurate and misleading information is a violation of the Code of Ethics.

With respect to specific deterrence, the sanction must unequivocally reflect the gravity of the infractions. As noted on p. 74 of RECO's Book of Authorities in *Her Majesty the Queen*

and Leading Seaman, J.B. Thies, Offender, one of the objectives of imposing sanctions is to deter the offender and other persons from committing the same offences.

To downplay Patel's role in breaching the Code of Ethics, attempts were made at the discipline hearing to discredit at least two of the registrants who had provided competing offers to the Seller. That was attempted by asserting that it was *their* responsibility to make inquiries with Patel about any actual commission reduction, and to suggest that they were to blame for not being successful in getting the Property for their clients.

Unfortunately, there is no indication in Patel's letter providing his submissions on penalty that he acknowledges or accepts responsibility for his actions in this matter.

By providing inaccurate and incomplete information to other realtors in the transaction, Patel failed to treat everyone with honesty and integrity. He did not take steps to prevent error, misrepresentation, or unethical practices. The public is entitled to trust registrants and rely on information being provided to them as complete and accurate when they are making financial and transactional decisions.

As for general deterrence, the public needs to have confidence in the integrity of the profession. The public is entitled to expect that there will be consequences for realtors whose actions (a) do not abide by legal and ethical obligations and (b) do not reflect honesty and integrity. Where there is evidence of the wilful making of false or inaccurate misrepresentations, the public should be able to look to a regulatory body to deal with such conduct to ensure that registrants know that they will be held accountable.

The greater the degree that a registrant's conduct is outside the expected professionalism and ethical behaviour, the more onerous a registrant can expect a penalty to be. Given the availability and ease of instantaneous electronic communication, Patel could have easily disclosed to other realtors the commission reduction arrangement with the Seller once it became a reality. Unfortunately, he chose not to do so.

The Panel found that Patel ignored his responsibilities to fellow registrants and to their respective clients. The public at large was injured by Patel's conduct, which created an uneven playing field in his favour. Those circumstances undermined the ability of all participants to bid fairly and equally to purchase the Property, and the sanctions in this case need to reflect the severity of Patel's actions. The Registrant's conduct served to undermine credibility and the integrity within the profession.

Given the gravity of his infractions, including the many parties who were affected by Patel's conduct, and the range of sanctions in similar cases, the Panel has concluded that a penalty of \$17,000 and a requirement that Patel successfully complete Parts 1 and 2 of the RECO Continuing Education course in Compliance and Ethics in Real Estate, within 180 days of the Decision of the Panel, is appropriate. An order to that effect shall be and is hereby made.

[Released: February 21, 2025]



**IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO THE
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BETWEEN:

REAL ESTATE COUNCIL OF ONTARIO

- AND -

PINAKIN SURESHBHAI PATEL (registered as PINAKIN PATEL)

DISCIPLINE DECISION AND REASONS FOR DECISION

APPEARANCES:

For the Registrant:

Raman Dua

For the Real Estate Council of Ontario: Michael Collis, counsel

Heard in Toronto on:

March 11, 2024

FINDINGS:

In violation of Sections 2(1) as it related to section 25, 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 March 11, 2024, in the presence of the Respondent Pinakin Sureshbhai Patel (the “Registrant” and/or “Patel”); Raman Dua, representative for Patel; and Michael Collis, counsel for the Registrar at the Real Estate Council of Ontario. The Panel was comprised of Mary Di Felice, Teri-Lynn Harlick and Salim Somani. Douglas Cunningham 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 Pinakin Patel (“Patel” or “Registrant”) had acted unprofessionally when:

Patel failed to disclose to all competing buyers the agreement with the Sellers to reduce the brokerage commission by 1.0% for the offer of Buyer B (i.e. his own buyer clients), contrary to sections 3, 39 and 2(1) in respect of section 25 of the Code of Ethics.

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

Broker and salesperson.

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

(2) Subsection (1) does not apply to a contravention by the brokerage of section 32, 22 or 41.

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.

Agreements relating to commission

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

(2) Subsection (1) applies, with necessary modifications, to a brokerage that has a seller as a customer, if the brokerage and the seller have an agreement that provides for the brokerage to receive written offers to buy.

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

1. Allegation Statement dated November 29, 2022
2. Notice of Hearing dated January 31, 2024

3. RECO Book of Documents dated February 14, 2023

WITNESSES FOR THE REGISTRAR, REBBA 2002

1. Individual A
2. Registrant A
3. Officer A

WITNESSES FOR THE RESPONDENT

1. Pinakin Patel

REGISTRAR – OPENING STATEMENT

The Registrar, as represented by RECO’s Prosecutor, submitted that the evidence would show that, in order to sell the real property at 1-A Street in City A, Ontario (“Property”) to his own buyers, the Registrant reduced the commission payable in a double-ended transaction. Further, the hearing would reveal that there is no dispute that Patel reduced the commission payable to him and his brokerage. However, what was in dispute was whether Patel disclosed that collateral commission arrangement to each realtor who had submitted an offer for the Property in the sale of the Property to his own buyers.

Finally, it was submitted that the Prosecutor would show that Patel’s failure to make such a disclosure in a timely and appropriate manner constituted a breach of RECO’s Code of Ethics.

Specifically, the Prosecutor stated that, contrary to section 25 of the Code of Ethics, Patel did not disclose the collateral commission agreement to all competing buyers, and that three witnesses would be called to testify on that issue.

The first witness, Individual A (“Individual A”), was the complainant to RECO that resulted in the discipline hearing. Individual A had represented competing would-be buyers, and it was expected that he would confirm that he was never informed by Patel of an agreement to reduce Patel’s commission.

The second witness, Registrant A (“Registrant A”), who also represented competing buyers, would advise whether he was told during the offer process that Patel had agreed to accept a reduced commission if he sold the Property to his own buyer.

The third witness, Officer A (Officer A), was the RECO compliance officer who investigated the complaint by Individual A. The Prosecutor advised that she would testify as to the investigation and correspondence with the Registrant and other persons involved in the investigation.

The Prosecutor submitted that the evidence of the complainant should be believed over the Registrant’s evidence and that the Panel should conclude that disclosure of an existing collateral agreement was not made to other realtors, including the complainant.

REGISTRANT – OPENING STATEMENT

The Registrant submitted that he did not agree with RECO’s allegations and that, in a sense, this case was similar to a case of “mistaken identity”. Even though the major allegation by RECO was that Patel had failed to disclose to all competing buyers his agreement with the seller to reduce the listing brokerage’s commission by 1%, no one expressed any concern about issues relating to the disclosure or non-disclosure of the commission reduction agreement.

It was submitted that the Panel would see that that Individual A’s complaint to RECO was that the seller simply accepted an offer that was *marginally* better than the complainant’s offer. In Patel’s view, Individual A’s buyer simply lost out in a competitive bidding situation.

The Registrant submitted that he did not fail to make any required disclosures under the Code of Ethics. Further, he asserted that the evidence would show that there was no motive on his part to hide information, including a collateral commission arrangement, because his buyers' offer would have been accepted in any event by the sellers because it was the highest price in a firm offer with a favourable closing date.

As such, there could be no finding of any contravention of RECO's Code of Ethics. However, Patel conceded that problems might have been avoided if he had provided written confirmation of the commission adjustment, perhaps by text or email, to other realtors.

It was also acknowledged that disclosure in writing would have given Patel the benefit of the doubt, especially in view of the multiple offer situation and the chain of events relating to the sale of the Property.

Patel submitted that, after reviewing all the circumstances, the Panel should conclude that he did a good job in protecting his clients' interests in a double-ended transaction and that he had been fair and transparent to all other parties.

RECO'S FIRST WITNESS – INDIVIDUAL A

Individual A is currently a software consultant with Bank A. Prior to his job with the Bank, he was a real estate salesperson, registered with RECO in 2016. In 2022, he was representing a buyer for the purchase of the Property. He filed a complaint with RECO against Patel for two reasons: 1) there was no disclosure of a commission reduction agreement that Patel had made with the seller and, 2) there was no disclosure to him or his buyers on how many rounds the sellers would conduct as part of the multiple offer presentation process.

Individual A identified in RECO's Book of Documents the complaint he had submitted to RECO. He also referred to a copy of the listing for the Property, which showed a commission payable to the co-operating brokerage of 2% (plus HST).

Individual A booked a showing for the Property and submitted an offer at approximately 6:30 p.m. on February 28, 2022. The Confirmation of Cooperation with the Offer notes that a commission of 2% of the sale price would be payable by the seller to the co-operating brokerage.

The revised Agreement of Purchase and Sale for \$860,000 from Individual A's clients indicates that the original offer price of \$850,000 had been improved by \$10,000 in the revised offer. The revised offer was submitted at approximately 7:30 p.m. But the revised offer from Individual A's client was not accepted. Individual A believed at the time that there were five or six parties making offers. He confirmed that he became aware that the Property had ultimately been sold by the listing representative, Patel, to buyers that Patel had brought to the transaction.

In Patel's response to Individual A's complaint to RECO, he asserted that all the realtors who submitted offers were told by him that: (a) he (Patel) had his own buyers submitting an offer; (b) that the sellers preferred a later closing date; and (c) that there might be a commission reduction involving a double-ended transaction by Patel.

Individual A testified that Patel's response to RECO was not accurate because he (Individual A) was not told of a possible commission reduction.

In a message that Patel sent to Individual A, he stated that the sellers decided to go with the offer from Patel's buyers because of the later closing date. Patel added that the top three offers were very close and the sellers had also negotiated a 1% commission reduction with Patel.

But, based on Individual A's evidence, Patel had never told Individual A on or about February 28, 2022, including any time prior to the submission of the offer or revised offer from Individual A's client, about any commission reduction arrangement.

Individual A testified that he and Patel had a telephone conversation because Individual A wanted to know how many times the sellers would allow for revised offers to be submitted. When Individual A was asked about the commission reduction issue, and whether it had been disclosed to him by Patel verbally, Individual A confirmed that they did not have any discussion about that issue. In short, there was no written or oral disclosure of any such arrangement.

Upon being presented with a copy of the Agreement of Purchase and Sale submitted by Patel's buyer, Individual A confirmed that the offer showed a sale price of \$862,000, and that it had been accepted at 9:04 p.m. on February 28th, 2022.

By contrast, Individual A's revised offer of \$860,000 was sent to Patel to the seller around 7:30 p.m. for presentation, that is, before Patel's offer was accepted by the sellers. Individual A was never told by Patel that there was a "final round" of offers for all offering parties. Individual A was never given notice that the submission of his client's revised offer was part of any "final round" of offers.

CROSS-EXAMINATION OF INDIVIDUAL A BY THE REGISTRANT'S REPRESENTATIVE

Individual A obtained his realtor's licence in 2016 and, by 2022, he had almost seven years experience as a realtor. However, he had only done two transactions in seven years, the last one being in 2022. The Registrant's representative confirmed that Individual A's would-be buyers of the Property, subsequently bought a pre-construction property but that Individual A was not involved in that transaction.

Individual A had previously participated in one other multiple representation situation in which his client did not purchase the property in question. Thus, most of Individual A's experience had been with buyers looking to purchase properties rather than succeeding in purchasing them.

Individual A's complaint to RECO is that he was not told how many opportunities the sellers or the listing agent would provide to other would-be buyers to revise their offers. On cross-examination, Individual A was asked whether the listing agent had an obligation to advise how many presentation rounds would be permitted. Individual A responded that there should be clear communication on how the process would play out.

With respect to Individual A's second complaint-- that he was never told about the commission reduction arrangement between the sellers and Patel's brokerage, Individual A was asked to identify where in his complaint to RECO he had raised that issue. Individual A acknowledged that he did not mention it in his initial complaint but that, subsequently, he had a discussion with RECO officials during which he confirmed that there was no notice to him from Patel about any commission reduction arrangement.

Individual A added that part of his complaint was about how the issue of multiple representation was handled by Patel. Patel, as the listing agent, was bringing his own buyers to the situation, and Individual A wanted to know the procedure to ensure that all buyers were given a fair opportunity to bid on the Property. However, Individual A advised that it appeared to him that Patel was only interested in ensuring that his own clients purchased the Property.

On the issue of the timing of his client's offers for the Property, Individual A confirmed, on the basis of emails, that the initial offer was sent about 3:43 p.m., and not at 6:30 p.m. as had previously been suggested. Individual A explained that there actually a revised offer sent at 6:30 p.m., providing the same price as the initial offer, but removing certain conditions from the initial offer. However, another revised offer—containing a \$10,000 increase in the purchase price -- was sent at approximately 7:30 p.m. and no further offers were sent by his client after 7:30 p.m.

When asked to explain why he felt his client had been treated unfairly, and not given a fair chance in the transaction, Individual A said that Patel's email to him at 7:56 p.m. on February 28, 2022, simply asked whether the offer Individual A had submitted at 7:30

p.m. was his client's final price. Individual A claimed that he did not understand why Patel would be asking him if that was his client's final offer.

Individual A stated he was not clear whether there would be a further opportunity to present a revised offer; otherwise why would Patel be asking if the offer sent at 7:30 p.m. was his client's final offer? Patel told Individual A that the offer process would continue that evening. Individual A testified that after the \$860,000 revised offer from his client, his client was still willing to revise the offer.

When Individual A was subsequently advised that his client's offer had not been accepted, he called Patel for an explanation but that he did not receive any response to his call. Individual A confirmed on cross-examination that he did not contact the listing brokerage's broker of record to express his concern, nor did he contact his own broker of record. Individual A confirmed that he had received emails advising him of competing offers that had been registered for the Property and that he had been advised that Patel had an offer from his own buyers to purchase the Property.

Individual A advised that he has been through multiple offer situations in the past but in those other situations he felt that his clients had been given a fair opportunity to obtain the property in question. When asked to advise whether the deal in February 2022 was important to him, Individual A responded that all deals are important to him.

RECO'S SECOND WITNESS – REGISTRANT A

Registrant A, another realtor whose client was interested in the Property in February 2022, showed his clients the Property and they subsequently submitted an offer. To the best of his recollection, Registrant A spoke to Patel before submitting the offer and he spoke to his clients to review comparable sales data. They determined a price for the offer and submitted the offer to Patel at 6:20 p.m.

The buyers being represented by Registrant A later improved their offer to \$861,500, which revised offer was sent to Patel at 8:36 p.m. Registrant A confirmed that the offer was the final offer from his clients.

Registrant A confirmed that Patel had disclosed to him that he was representing buyers and he found out that Patel had represented the successful buyers.

When asked by the Prosecutor whether Patel had disclosed anything relating to commissions, including commission reductions, to him, Individual A responded that Patel had not done so.

Registrant A could not find any emails, nor does he recall any commission-related issues or disclosures being raised or discussed by Patel. Registrant A sent an email to RECO confirming that no disclosure was made to him by Patel about any commission adjustment or reduction in the transaction for the Property.

CROSS-EXAMINATION OF INDIVIDUAL A BY THE REGISTRANT'S REPRESENTATIVE

Registrant A testified that he joined the real estate industry in 2019 and has been licensed as a broker for three years. He has represented both buyers and sellers in his practice.

Registrant A admitted that his recollection is not perfect given the passage of time. However, he followed his clients' instructions and sent an offer on their behalf to Patel. His clients then instructed him to improve their offer.

Registrant A was aware that there were five offers for the Property, with a sixth offer from Patel's own clients. Individual A acknowledged that he was given time for his clients to submit a second offer but he was not given any disclosure relating to a commission reduction arrangement involving Patel's buyers and the seller. His clients also do not recall any commission-related issues being raised by Patel.

When asked if it was possible that a discussion about commission reduction had taken place between Patel and Individual A and that he simply did not now recall it, Individual A said he was not told about any commission reduction and, in any event, such an arrangement should have been disclosed to him in writing.

Individual A identified his number in the phone records that were shown to him. There were several short calls around the time his clients' final offer was made at 8:30 p.m. There were five incoming and outgoing calls between 8:00 p.m. and 8:31 p.m. Individual A acknowledged that he does not recall the conversations he had with Patel during their phone conversations but suggested it could have been confirmation that Patel had received his (Individual A's) improved offer.

Individual A only came to know that Patel had made a commission adjustment favouring Patel's buyers/seller when RECO contacted him, that is, after the complaint from Individual A had been received.

RECO's investigator asked Registrant A if he had any written confirmation that the commission reduction had been disclosed to him. Because he wanted to give RECO's investigator an accurate answer, he searched all of his emails and reviewed them with his broker. There was nothing from Patel relating to any commission reduction.

He also went through text messages and emails he had with his clients to see if there was any mention of a commission reduction involving Patel. When he did not find anything, he called his buyers to ask if they had any recollection about a commission reduction involving the listing agent. According to Registrant A, his clients did not recall anything. There was no written disclosure from Patel about a commission reduction arrangement involving the seller and Patel's buyer clients.

Registrant A further stated that if he had been advised of a commission reduction, he would have spoken about it with his clients. After the Property was reported as sold,

Registrant A learned that the sale price for the Property was \$500.00 more than his own clients' offer and that the Property had been sold by Patel to his own buyer clients.

When asked if he thought he had been wronged by Patel or that something was not done right as per RECO's Code of Ethics—after Registrant A found out that the Property had sold for \$500.00 more than his own clients' offer – Registrant A responded that, as the listing representative, Patel would have seen the other offers and he could have adjusted his own buyers' offer to a slightly higher amount than Registrant A's offer to double-end the transaction.

Registrant A had that belief at that time but he continued forward believing that, if one gets stuck on one issue, there is no moving forward. Registrant A had conversations with his clients about Patel, but his clients but they moved on to view other properties that met their search criteria.

Registrant A was asked whether, as a reasonable realtor, it would have been his responsibility to raise the issue with his own broker of record, another realtor's broker of record, or RECO, if he believed that another realtor had done something unfair to his (Registrant A's) clients.

Registrant A responded that if he had learned after the sale about the commission reduction in the transaction for the Property, he would have reported it to RECO as an unfair trade. However, Registrant A only came to know about the commission reduction arrangement long after it took place when he was contacted by RECO (during its investigation of Individual A's complaint).

Admitting that he knew there were five offers for the Property, one of which was Patel's offer, Registrant A was asked whether he inquired with Patel whether there was a commission reduction agreement in existence. Patel's representative suggested it was common practice to ask such a question to protect the best interests of one's buyer in a multi-offer situation. Registrant A was also asked if there was any reason he did not pose

that question to Patel. Finally, Registrant A was questioned whether the commission reduction arrangement involving Patel had, in fact, been disclosed verbally to him and that was the reason he may not have raised the issue with Patel.

Registrant A testified that this case was the first time he had been put in a multiple offer situation where there had been no verbal or written disclosure to him of any commission reduction agreement. In previous transactions, where commission issues and adjustments existed, he had received an email notifying him of the change in commission. In each of those cases, he had relayed the information to his clients. Registrant A added that RECO has clear policies and guidelines and there is an expectation of fairness in real estate transactions. Registrant A asserted that it was the responsibility of the listing agent to advise of a commission reduction in writing to all other realtors.

The Registrant's representative posited that there were two sides to the issue of the commission adjustment in this matter. One side was that disclosure had not been made in writing and he agreed with Registrant A on that point.

However, RECO guidelines outline that commission adjustments should be disclosed to all agents at the first available opportunity and before any offer is accepted.

The other side to the issue was whether, at the very least, the commission reduction had been disclosed to Registrant A verbally by Patel. Patel's representative suggested that verbal disclosure by Patel had been made and that was the reason why Registrant A had not raised it with Patel on his (Registrant A's) own initiative.

Registrant A disagreed. He testified that if Patel had disclosed the commission reduction to him verbally, no complaint would have been made to RECO (by Individual A). Although Registrant A did not file a complaint with RECO, he is a witness in this matter with his own information in the same transaction. Registrant A confirmed that if he had been told of a commission reduction by Patel, he would have discussed that issue with his own clients. When the commission reduction arrangement was brought to his attention by

RECO's investigation, Registrant A spoke with his clients about any recollection they had concerning a commission reduction during the Property transaction; his clients also did not recall the issue ever being raised or discussed.

On cross-examination, it was pointed out that a RECO investigator sent Registrant A an email on August 4, 2022, but that Registrant A did not respond to the email immediately. When asked why it took him considerable time to respond to RECO's inquiries regarding the commission reduction issue, Registrant A advised he was initially unaware that the email from RECO had been diverted to his spam folder. His broker of record subsequently notified him that an email may have been sent to him by RECO and that is when Registrant A reviewed all his emails and he found RECO's August 4, 2022, communication. Registrant A also received a call from the RECO investigator and he (Registrant A) apologized and said he would go through all his emails to check for any communications from Patel disclosing the existence of a commission reduction agreement with the seller of the Property.

Registrant A read his responding email to RECO for everyone at the hearing: "The listing agent did not disclose anything regarding a commission adjustment to me, verbally or in writing." Registrant A added that, to the best of his knowledge, his information was correct.

RECO WITNESS – OFFICER A

Officer A works at RECO and was a Compliance Officer when RECO received Individual A's complaint. Individual A was asked to identify various documents for the record.

Officer A confirmed receipt of Individual A's complaint to RECO relating to the sale of the Property. Officer A testified that, briefly stated, the complaint was about a multiple offer situation that had not been handled properly.

Officer A was asked to identify the following documents contained in the Book of Documents, which she did:

Tab 2A, MLS© listing for the Property.

Tab 2B: Offer Summary Document for the buyers represented by Individual A.

Page 19: (Revised) Agreement of Purchase and Sale (i.e. Offer) dated February 28, 2022, for \$860,000, from Individual A's buyers.

Page 27: Confirmation of Co-operation and Representation

Page 30: Offer Summary Document from Individual A's buyers

Page 32: Initial Agreement of Purchase and Sale for \$850,000 (i.e. Offer), from Individual A's buyers

Page 40: Confirmation of Co-operation and Representation

Page 43: Notice of Complaint issued by RECO to Patel

Page 46: Patel's response to the Complaint to RECO, dated May 16, 2022

Page 49: Documents obtained by RECO during its investigation of the Complaint

Page 57: Summary of Offers and presentation, provided by Patel. Upon reviewing this document, Officer A discovered that there was a reduction in the commission during the offer process and she was unsure whether the commission reduction had been disclosed to the competing parties. The bidding timeline and the receipt of various offers took place over a short period. Officer A asked Individual A if the reduction in commission had been disclosed to him, and he advised that it had not been disclosed.

Page 67: Email to Patel on February 28, 2022 at 5:20 p.m., from one of the offering parties, Individual B, with an Offer attached

Page 70: Agreement of Purchase and Sale from other would-be buyers for \$800,000

Page 82: Email from Individual C to Patel, dated February 28, 2022 at 3:25 p.m., submitting an offer

Page 85: Agreement of Purchase and Sale from would-be buyer, Individual D, for \$831,000

Page 96: Email correspondence from Patel to Individual A on February 28, 2022 at 7:53 p.m. to confirm whether it is the final offer from Individual A's clients

Page 125: (Revised) Agreement of Purchase and Sale (i.e. Offer) for \$860,000 that Individual A had submitted for his clients.

Page 136: Email summary from BrokerBay to Patel outlining the number of registered offers

Page 138: Email from Individual E to Patel at 5:11 p.m., submitting another offer for the Property

Page 141: Agreement of Purchase and Sale (i.e. Offer) provided by another set of buyers for \$785,000

Page 155: Email from Registrant A to Patel on February 28, 2022 at 8:36 p.m., submitting final offer from his buyers

Pages 167-173: Agreement of Purchase and Sale from Registrant A's buyers for \$861,500. This offer was very close in price to the accepted offer from Patel's clients

Page 176: Sellers' email communication to Patel

Page 184: Listing Agreement, dated February 17, 2022, for 1-A Street, City A, between the Sellers and Brokerage A. Total commission agreed upon is 3.5% plus HST.

Page 195: Agreement of Purchase and Sale (i.e. Offer) for the would-be buyers, Individual F and Individual G, who were represented by Patel. The offer price was \$850,000.

Page 205-212: Revised Agreement of Purchase and Sale (i.e. Offer) from Patel's buyers at \$862,000. This offer was accepted February 28, 2022 at 9:04 p.m.

Page 216: Buyer Representation Agreement between the listing brokerage and Individual F and Individual G, dated February 28, 2022

Page 223: Authentisign log details

Page 233: Electronic signature confirmation that the final offer for the Property was signed by Patel's buyers at 8:52 p.m. and accepted by the Sellers at 9:04 p.m.

Page 247: Trade Record Sheet for the subject property showing that the total commission payable was 2.5%. Patel is listed as the agent on the trade sheet.

Page 253: Listing Agreement for the Property. Commission on this document, which is 3.5%, is different from that on the trade sheet, at 2.5%, representing a 1% difference.

Page 257: Trade Record Sheet dated July 6, 2022. The amount of the commission is 2.5%.

Page 259: Email from RECO to Registrant A, inquiring about how the offer process was handled, and requesting whether the commission reduction was communicated to him in writing, and asking for Registrant A to submit any additional documents he had.

Page 264: Email from RECO to Individual E, with a request similar to that made by RECO to Registrant A. Individual E responded that she did not recall being notified of any

commission reduction in favour of the sellers if Patel should bring buyers to the transaction

Page 276: Email from Registrant A about the commission reduction issue.

As a result of her investigation, and after contacting all the parties and reviewing documentation, Officer A concluded that the commission adjustment by Patel's brokerage had not been disclosed to other realtors.

After Officer A's investigation, the file was referred to RECO's legal counsel for further investigation and consideration.

CROSS-EXAMINATION OF OFFICER A BY THE REGISTRANT'S REPRESENTATIVE

Referring to the Allegation Statement, specifically s. 25(1) of the Code of Ethics, the Registrant's representative asked Officer A to provide her opinion on the importance of the 1% commission reduction in the Sellers' decision to accept the offer for the Property from Patel's buyer clients.

RECO's prosecutor objected to that request, which objection was sustained by the Panel and the request was withdrawn.

RECO rested its case after Officer A had been cross examined.

REGISTRANT'S CASE – WITNESS PATEL

As part of the marketing of the Property, Patel signed the listing agreement with his seller clients.

Patel confirmed that there was no commission reduction agreement in place at the time the listing was executed. He asserted that the issue of a commission reduction was raised

by the sellers during offer negotiations on February 28, 2022. With respect to his phone call records between 8:00 to 8:31 p.m. on February 28, 2022, Patel was asked to identify the phone number. According to Patel, the number was Registrant A's cell number. Patel stated that these calls were about Registrant A's offer, how many offers there were, what expectation the sellers had, and negotiations relating to the commission that would be payable upon a successful transaction with Registrant A's buyers. Patel claimed that, during his calls, he mentioned to Registrant A (and all the other realtors who had submitted offers for the Property) that a commission reduction agreement was in place with the sellers. In fact, Patel said he raised the commission reduction issue with Registrant A and that he had a lengthy conversation with him, especially because the offer from Registrant A's buyers was the second highest offer submitted to the sellers. Patel claimed that he wanted to make sure Registrant A knew everything that Patel was doing in the transaction.

In reviewing the phone records, Patel identified a number belonging to another realtor acting on behalf of his wife, whose name was Individual E. Patel advised that he did not have any direct conversation with Individual E but rather with her husband.

The telephone number for yet another realtor who had submitted an offer on the property was identified by Patel based on his phone records. Patel stated that he had a phone conversation with that realtor (Individual H) and claimed that he discussed with Individual H the number of offers for the Property, including the possibility of a reduction in the commission payable in the transaction. The Panel notes that no direct evidence, sworn or otherwise, from that realtor (Individual H) was produced by Patel.

Patel identified Individual A's phone number and stated that he spoke to Individual A about his clients' offer, which Patel characterized as not being a firm offer. However, Individual A followed up later on February 28, 2022 by sending a firm offer. After 7:00 p.m. on that date, he talked to Individual A again about the number of offers received for the Property, about Patel's offer from his buyer clients, and about the possibility of a reduction in commission in favour of the sellers.

Patel testified that, after the 7:00 p.m. deadline for the delivery and registration of offers, he talked to every realtor who had submitted an offer for the Property. Patel stated that he did not suggest the offer price of \$862,000 to his buyers. Rather, his buyers came up with the offer price on their own as their final price. The \$862,000 offer (which was \$500 more than the next highest offer) was submitted to the sellers, who accepted that offer. Patel added the offer from his buyer clients also had a later closing date (compared to the offer from Individual A's buyers), which Patel claimed was a feature being sought by the sellers. Patel told the Panel that he also had conversations with the sellers and he knew that it was probable that the sellers would have accepted the offer of \$862,000—even in the absence of Patel reducing the commission payable.

Patel emphasized that \$862,000 was the highest monetary offer for the Property compared to the offers from the other realtors. Patel stated that the sellers would have definitely taken the \$862,000 even without a commission reduction, because it was the highest offer and a really good price. Patel testified that the sellers were aware of current market conditions, purchase and sale trends, and the maximum price that they could likely get for the Property.

CROSS-EXAMINATION OF PATEL BY THE RECO

Authentisign details for the final offer from Patel's buyer clients were noted in the Book of Documents, showing their offer was delivered at 8:52 p.m. However, RECO's Prosecutor observed that it was the last offer submitted to the sellers by any buyers, and that the \$851,500 offer from Registrant A's buyers had been delivered at 8:36 p.m.

Patel's buyers were Individual F and Individual G and he clarified that the documentation showed that the sellers received their offer at 8:52 p.m. The documents also showed that the offer had been updated by Patel's buyers at 8:49 p.m. Patel confirmed that the offer from his buyer clients was only \$500 more than the best offer from any other realtor. When asked to confirm that he knew he was required to disclose a commission reduction agreement to each realtor, Patel confirmed that he was aware of that obligation and responsibility.

When asked if he had any written evidence that he had notified Registrant A or Individual A of the commission reduction, Patel agreed he did not have anything in writing but that he had had phone conversations with each of the agents who submitted offers for the Property. Patel asserted that he advised all of them of the possible reduction in commission.

In follow up questioning, Patel was asked whether-- after the commission reduction was actually applied to his own clients' transaction --he communicated that decision and fact to each of the realtors with whom he was dealing. Further, did Patel have another telephone conversation with each agent to make it clear that his buyers' successful bid had involved a commission reduction?

Patel responded in the negative; he had not made such phone calls.

Patel claimed that he disclosed to Individual E's husband that there was the possibility of a commission reduction but he could not recall the name of Individual E's husband.

It is Patel's position that the sellers would have accepted his buyers' offer for \$862,000 even without the reduction in commission that was granted by his brokerage. The Prosecutor asked if Patel would be calling the sellers to testify at this hearing that they would have accepted the \$862,000 offer even without a reduction in commission. Patel confirmed that the sellers would not be called to testify on that issue. No further witnesses were called by the Registrant.

PANEL'S QUESTIONING OF PATEL

The Panel asked Patel if he knew there would be a commission reduction and if he disclosed it to all the other agents. Patel responded that he told all the agents that he *might* have a commission reduction in a transaction where he was bringing buyers to the transaction.

The buyers represented by Patel's brokerage were the last persons to submit an offer to the sellers. According to Patel, Individual A's clients submitted their last offer after 7:30 p.m. and that Individual A subsequently confirmed it would be their final offer. At 8:36 p.m., Registrant A sent an improved and final offer.

Given that information, the Panel asked whether, thereafter, Patel began discussing with his sellers which offer they might accept. Patel responded no and advised that he was still waiting for the "final number" from his own buyer clients. After that number was provided (i.e. \$862,000), the sellers would make a decision relating to any offers.

Patel confirmed that the sellers did not make a decision about any offer until the offer from Patel's buyers had been received. According to Patel, he requested confirmation from Individual A and Registrant A whether the offers they had submitted were their clients' last and final offers. By that time, however, Patel had not received his own client's final offer and he also did not have a final decision or agreement on commission issues.

Patel stated that, after he received his buyers' final offer and it was presented to the sellers, the sellers made a determination as to which offer they were going to accept.

On the issue of any commission reduction, the Panel asked Patel whether—once he learned that there would be a reduction in his brokerage's commission – he halted the transaction to notify other realtors who had already submitted offers that there was a commission reduction in place. Patel stated that the sellers simply accepted the offer from his buyers and that he did not have further discussions with other realtors because he had *already* told them that there *might* be a commission reduction in the circumstances. He asserted that, since he had previously raised the possibility of a commission reduction with other realtors on the telephone, he considered that he had already notified them.

Patel reiterated his previous testimony that the sellers were prepared to accept the offer from Patel's buyer clients for \$862,000 even without any reduction in commission.

When asked whether he considered putting the commission reduction agreement with the sellers in writing, and sharing it with other realtors, Patel responded by advising that the transaction for the Property had been “a long process”. He maintained that, throughout the offer process for the Property, he was in continuous communication with all other realtors, but acknowledged that he never provided written notice of any commission reduction to them. Finally, although Patel admitted that he did not provide any notice to other realtors in writing, he stated that they had all been advised that a commission reduction might be part of the transaction for the Property.

SUBMISSIONS FOR THE REGISTRAR, REBBA 2002

RECO's Prosecutor submitted that the listing agreement and related documentation indicated that the commission payable upon the purchase and sale of the Property was to have been 3.5% in total, with 2% being paid to any co-operating brokerage upon a successful transaction.

The facts relating to the offers submitted by Individual A's buyers were summarized by the Prosecutor. He submitted that Individual A's testimony confirmed that Individual A knew the situation involved multiple offers; however, Individual A was never advised verbally or in writing by Patel that the transaction was (a) going to involve or (b) that it did indeed involve a commission reduction that would operate in favour of Patel's buyer clients and the sellers.

It was submitted that the next witness for RECO, Registrant A, had also submitted multiple offers on his clients' behalf for the Property. The initial offer of \$825,500 had been made at approximately 6:30 p.m., while the final offer for \$861,500 was delivered just over two hours later. The Confirmation of Co-Operation and Representation that Registrant A submitted indicated a commission payable to the co-operating brokerage of 2%.

Registrant A had also identified his email to RECO on August 2, 2023, in which he confirmed that the listing agent did not disclose to him, either verbally or in writing,

anything about a commission reduction; he also confirmed that his email was consistent with his recollection of events.

The Prosecutor noted that RECO's last witness, Officer A, is a Compliance Officer for RECO. She clearly identified key documents relating to the transaction for the Property. Further, in responding to the complaint to RECO against him, Patel had written: "All the Realtors who sent an offer were given a fair chance and disclosed again about our own offer and possible reduction in commission." Patel had also advised RECO that the highest three offers were very close in their price for the Property but that the sellers had decided to accept the offer from Patel's buyers because of the later closing date. Finally, Patel mentioned that it was the sellers who had negotiated a 1% reduction in total commission to be paid in the transaction.

During RECO's investigation, Individual A confirmed that he had not been advised by Patel of any commission reduction relating to the sale of the Property. Officer A also identified email communications between Patel and his buyers that showed their first offer was \$850,000 and their second offer was \$862,000.

The Buyer Representation Agreement indicated that the buyers retained Patel on the same date as their offer, that is, February 28, 2022. In her evidence, Officer A identified the listing agreement and the trade record sheet for the Property. The listing agreement indicated a total commission of 3.5% but the trade record sheet indicated that a reduced commission of 2.5% was paid on the transaction.

The Prosecutor submitted that the evidence showed Officer A had asked Individual E (a would-be buyer) if Patel had disclosed that there might be a commission adjustment on the transaction; for her part, Individual E could not recall. By contrast, Registrant A's email to RECO was emphatic that Patel had not disclosed to him a commission reduction, verbally or in writing.

Offers from Individual A showed that his clients' offer for the Property was ultimately increased to \$860,000, with the understanding that a 2.0% commission was being paid

to the co-operating realtor. As was the case for Registrant A, no disclosure of any collateral agreement or commission adjustment or reduction by Patel was made to Individual A.

Registrant A's clients initially offered \$825,000 but his clients' final offer was \$861,500. When the higher offer was submitted, Registrant A continued to believe that the total commission payable on any transaction was 3.5%, with 2.0 % payable to the co-operating realtor.

It was noted that Patel had claimed that all other realtors were advised of a "possible commission reduction" and that there were non-price related reasons why the sellers accepted the offer that came Patel's buyers. The trade record sheets produced after the Property had been sold were the only documents showing a commission reduction.

The Prosecutor noted Patel's assertion that the sellers would have accepted his buyer-clients' offer in any event, that is, even if there had been no commission reduction. However, at the hearing, *no* direct evidence from the sellers was presented to support that assertion. The sellers were not called by Patel as witnesses, and no sworn or unsworn evidence was obtained from them relating to their reasons for accepting the offer from Patel's buyer clients, or commission-related issues.

The Prosecutor made it clear that, even if one were to accept Patel's assertion at face value (which RECO does not), Patel nevertheless admitted during cross-examination and on questioning by the Panel, that he *failed* to disclose the commission reduction once it had been agreed upon between Patel's brokerage and the sellers. Patel's evidence was that he had only disclosed to other realtors verbally that there *might* be a commission reduction in the sale of the Property. The evidence, however, showed that no disclosure of an actual commission reduction was ever made to any other realtor before the sellers accepted the offer from Patel's buyers late in the evening of February 28, 2022.

The Prosecutor submitted that Patel was required to notify all buyers of a commission reduction agreement at the earliest possible opportunity and certainly before an Agreement of Purchase and Sale was concluded with the sellers. But Patel clearly failed to do so. Further, if Patel had disclosed to other realtors and would-be buyers that there was a commission reduction agreement in place, they would have had the opportunity to advise their clients. Such would-be buyers could have improved their offers knowing that there was a commission reduction in existence that benefited Patel's buyers. Another bidding round could have easily benefitted the sellers.

Patel identified the Authentisign confirmation for the offer from his own buyers; it indicates that the final offer was last updated by those buyers at 8:49 p.m. on February 28, 2022. The significance of this was that the successful offer was only \$500 more than the next best offer and it was delivered to the sellers *after* all the offers from other realtors had been submitted.

The next best offer was that from Registrant A's buyers, which had been submitted at 8:36 p.m. From the Confirmation of Acceptance in the Agreement of Purchase and Sale, the offer from Patel's buyers (with the commission reduction having been negotiated at the last minute) was accepted by the sellers just minutes later at 9:04 p.m.

The Prosecutor submitted that Patel, acting on both sides of the transaction, negotiated an offer on behalf of his buyer clients that gave them an edge over other would-be buyers, with the undisclosed commission reduction being preferential to the sellers.

The \$862,000 offer from Patel's buyers became the "best offer" compared to all the offers from other realtors *after* those other offers had been submitted for presentation to the sellers and reviewed by Patel. In his response to RECO's investigation, Patel wrote that the sellers had negotiated a 1% reduction in total commission. But the fact is, Patel did not disclose the commission reduction agreement to other realtors. He did not do it in writing and the evidence, on a balance of probabilities, indicates that he did not make that

disclosure verbally. That failure on Patel's part was a violation of Sections 3, 39 and 25, in reference to subsection 2 (1) of the Code of Ethics.

Subsection 2 (1) states that a broker or salesperson shall not do or omit to do anything that causes the brokerage that employs the broker or salesperson to contravene this regulation. Section 25 deals with commission issues in agreements and provides that, if a brokerage has a seller as a client, and an agreement between the brokerage and the seller contains an agreement concerning commission or other remuneration that may affect whether an offer to buy is accepted, the brokerage shall disclose the existence of and the details of those terms to any person who makes a written offer to buy, at the earliest practicable opportunity, and before any offer is accepted.

Because of Patel's violation of section 2(1) of the Code of Ethics—by failing to notify the other buyers, he put his brokerage at risk, which resulted in a violation of Section 2(1) as it related to section 25 of the Code.

The Prosecutor noted that section 3 requires that a registrant shall treat every person the registrant deals within the course of a trade in real estate, fairly, honestly and with integrity. It was submitted that the failure of Patel to disclose the commission reduction agreement was unfair to other buyers and it reflected a lack of integrity on his part, such that this provision in the Code of Ethics had been breached.

Section 39 was also cited by the Prosecutor. That provision, which relates to unprofessional conduct, states that a Registrant shall not, in the course of trading in real estate, engage in any act or omission which, having regard to all the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming of a registrant.

The Prosecutor stated that the evidence established that Patel had omitted disclosing the existence of the commission reduction agreement even though he was required to do so by law. Not doing so benefitted his buyer clients at the expense and opportunity of other

would-be buyers. In the process, the sellers' interests were not necessarily best served because no further round of offers took place. As a result, Patel's conduct had been a breach of section 39.

Although Patel had claimed had had informed each buyer on the telephone of a "possible commission reduction agreement", the evidence at the hearing did not support that assertion. Further, the complainant's evidence was both clear and compelling: Individual A testified that no disclosure and no discussion whatsoever had taken place about commission reduction issues. For her part, Individual E, another would-be buyer, also had no recollection of being told anything and neither did Registrant A.

The Prosecutor referred to the *Monica Thapar* decision in RECO's database and maintained that there are a number of parallels in this proceeding with that case.

In the Thapar case, RECO had alleged that the registrant failed to give notice of a commission reduction agreement. Thapar claimed that she did, although there was nothing in writing to support her assertion. In the *Thapar* decision, based on testimony at the hearing in that case, and in the absence of confirming documentation-- including emails and texts-- the Panel determined that the other agents were not told of the commission reduction agreement negotiated between the seller and Thapar.

The Panel in the *Thapar* case did not accept Thapar's evidence that she had verbally disclosed that there was a commission reduction in place. The Panel wrote: "*There was never anything preventing Thapar from advising the complainant in writing, of the existence of the alleged commission reduction agreement, which itself had not been committed to writing in that case, and the specific terms therein.*" The Panel added that Thapar could have easily sent a fax, e-mail or even in a text message to the complainant, which would have satisfied the disclosure obligation and protected everyone in the transaction.

In the *Thapar* case, the Panel found that the registrant had breached Subsections 2(1) in respect to Section 25, Section 3 and 39 of the Code of Ethics.

The Prosecutor in this proceeding submitted that the evidence against Patel was clear, and that a finding of his breach of all the cited provisions in the Code of Ethics was warranted.

In this proceeding, the final offer from Patel's buyer clients was last updated at 8:49 p.m. and it was only \$500 higher than the next highest offer. Patel's own testimony was that he advised other realtors of the "possibility" of a commission reduction agreement when he allegedly spoke to them on the telephone—something which RECO's witnesses generally denied.

However, even if the "possibility" of a commission reduction agreement was discussed, it is not the same as the required disclosure of an actual agreement before any offer is accepted, as mandated by the Code of Ethics.

The Prosecutor concluded by advising that the *Thapar* decision was directly relevant to the circumstances of this case and that the Panel should find Patel in breach of the Rules cited in the Allegation Statement.

SUBMISSIONS BY THE REGISTRANT

Patel submitted that RECO's allegations concerning the reduction of the commission had been front and centre during the hearing. In answer to that situation, Patel stated that, regardless of any commission reduction in the transaction, the sellers would have accepted the highest offer that was received (i.e. the offer from Patel's own buyers), which was \$862,000.

Further, other factors, such as a later closing date in his buyers' offer, were determinative for the sellers.

With respect to section 25(1) in the Code of Ethics, Patel emphasized that the issue of required disclosure should be understood in light of whether disclosure or non-disclosure would have affected the outcome of the transaction under review. In his submission, the sellers would have accepted the offer from his buyer-clients in the absence of any commission reduction. As a result, the issue of disclosure to other realtors of such an agreement was not material to the outcome of the transaction.

Section 25(1) reads:

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

Nevertheless, Patel conceded that, in this case, if he had notified other realtors in writing of the existence of his commission reduction agreement with the sellers, it would have made life simpler and avoided complications afterwards.

As for Patel's alleged verbal disclosure to other realtors of the "possibility" of a commission reduction agreement in the transaction, he asserted that the testimony of RECO's witnesses was not credible or trustworthy, especially that of the complainant Individual A. It was submitted that Individual A never raised in his complaint to RECO the issue of any reduction in commission or a commission reduction agreement. The suggested reason for the absence of that issue in the complaint was clear: it had never been an issue as between Patel and Individual A because it was known by both of them to be part of the transaction.

A slightly different argument was made with respect to Registrant A's evidence. Patel claimed that Registrant A was not too sure about the issue of commission reduction because the transaction had occurred two years previously. Registrant A could not initially recall a lot of things that were discussed at that time. It was a considerable time after he

was contacted by RECO that Registrant A advised he had not been notified verbally or in writing about any commission reduction agreement in the transaction.

In addition, Patel claimed that one need only review the *numerous* email communications and his cell phone records showing telephone calls by him to understand that he was very diligent in conveying all relevant facts and figures to other realtors representing would-be buyers. Patel claimed that the numerous emails and calls proved that his conduct was never to conceal or hide any information which he freely shared with other realtors.

Patel submitted that section 3 of the Code of Ethics did not apply to his case because he was always working honestly, with integrity, and fairly with other realtors and their respective clients.

According to Patel, it was simply a coincidence or fortuitous in this case that his own buyers' offer for the Property was \$500 more than the next highest offer and just \$2,000 more than the third-best offer.

He advised that, in the real estate industry, multiple offers close in price to each other occur frequently.

As for the fact that his own buyers' offer was the *last* offer prepared and sent to the sellers (after Patel would have received the offers from all other realtors), Patel said that there was no evidence of foul play or impropriety by him in the circumstances.

Patel submitted that, given all the documentary evidence, and the witness testimony at the hearing, he did not believe that the allegations of RECO against him had any merit.

Patel's representative recommended that the Panel consider all the documentary evidence and look closely at the facts. Further, given the "weak testimony" of RECO's witnesses, and giving Patel the benefit of doubt in a multiple offer situation, the Panel

should be lenient towards him to ensure that the wrong message is not sent to other realtors.

If Patel had made any mistakes, they were minor in nature and he should not be penalized. In this case, the Panel should not approach the matter strictly and Patel should not be sanctioned.

Once again, Patel emphasized that, in his view, the commission reduction agreement was not material to the transaction; it did not tip the balance in favour of the sellers to accept the offer that came from Patel's own buyers. Patel maintained that the sellers would have accepted the \$862,000 offer without any commission reduction.

Finally, Patel reiterated that there was nothing in Individual A's complaint to RECO alleging non-disclosure of a commission reduction arrangement. Further, there is "indirect evidence" that Patel had told Individual A about the commission reduction in the transaction.

Patel claimed he had been transparent throughout his dealings with other realtors and that he had acted with integrity in the offer process for the Property.

As such, the Panel should consider all the documentary evidence and give little weight to the "weak testimony" of RECO's witnesses and find in Patel's favour by dismissing the allegations against him.

Once again, the Panel was urged not to send the wrong message to the real estate industry and that Patel should be treated leniently in the circumstances.

RECO'S REPLY SUBMISSIONS

The Prosecutor stated that, instead of being treated leniently, the opposite should be the case. RECO emphasized that realtors should be held the high standards articulated in

the Code of Ethics, and that a registrant's ethics should be beyond question in a multiple offer situation. That was especially true where a listing realtor was bringing his own buyers to the transaction.

It was incumbent upon Patel to ensure that everything was "above board" and that other realtors and their would-be buyers were treated fairly. To suggest that Patel should be treated with leniency because he was in a multiple offer situation was misplaced and unacceptable.

The Prosecutor underscored that Patel had an opportunity to call his own witnesses at the hearing, including the sellers. As for the sellers and given Patel's assertions that the commission reduction agreement was not material to their acceptance of the offer from Patel's buyers, the sellers could have been called to testify why they had accepted the \$862,000 offer for the Property. They could have also advised the Panel why they had negotiated a commission reduction agreement prior to accepting the offer from Patel's buyers, especially if they would have (as Patel had maintained) accepted that offer in the absence of any commission reduction.

RECO advised that the negotiation of a commission reduction was obviously taken into account by the sellers in accepting the offer from Patel's buyers; if it had been irrelevant to their decision to accept that offer, it begs the question why the sellers requested a commission reduction from the listing brokerage. The fact is, the reduction in the commission would have been highly material to the transaction for the sellers.

The Prosecutor argued that Patel's submission that the commission reduction agreement did not influence whether the offer from his buyers would be accepted was non-sensical and unreasonable. It would have been highly relevant to the sellers—resulting in a significant savings to them, thereby making the offer from Patel's buyers much more attractive – such that it should have been disclosed to other realtors vying for the Property.

The comments made by the Registrant's representative about RECO's witnesses lacking credibility and being untrustworthy were unfounded. Individual A's complaint did not include any reference to the commission reduction agreement simply because it was first discovered during RECO's investigation and brought to his attention.

In fact, RECO did not know about the commission reduction arrangements until Patel-- in answer to the complaint to RECO --disclosed it in his response. As a result, RECO was within its right to proceed with its investigation of that issue, and ultimately refer the matter to discipline.

With reference to Patel's cell phone log, Patel had claimed that a simple record of a phone call having been made, whether incoming or outgoing, was evidence of the disclosure to other realtors of the commission reduction agreement he (Patel) had made with the sellers. The Prosecutor submitted that those records proved nothing about the content of any communications. Further, the evidence presented at the hearing had clearly established that Patel had *not* been diligent in disclosing the existence or details of the commission reduction agreement, either in writing or during any phone call. In fact, the overwhelming evidence showed the opposite.

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.

THE PANEL'S FINDINGS

Having reviewed the documents submitted as evidence at the hearing, and considering the testimony of various witnesses, including that of Patel, the Panel finds as follows:

1. Patel failed to disclose to competing buyers the commission reduction agreement he had negotiated with the sellers to reduce the listing brokerage's commission by 1% in respect of a proposed transaction with Patel's buyer clients; and
2. Patel breached sections 3, 39 and 2(1) in respect of Section 25 of the Code of Ethics. The Panel has determined that there was no evidence that Patel had notified any of the other parties to the transaction of the reduction in commission.

The trade record sheet shows that the total commission payable on the transaction (when compared to the listing) was reduced from 3.5% to 2.5%. Patel confirmed the commission reduction in his response to RECO when advised of Individual A's complaint.

Patel claimed that the sellers raised the issue of a commission reduction and that they had requested the listing brokerage to enter into an agreement on the issue as part of their acceptance of the offer from Patel's buyer clients.

The reality is that agreements are a relational activity which ordinarily involve negotiation; to be concluded, an agreement requires consent by the parties, certainty of subject matter, and consideration flowing both ways. In this case, the consideration would have been obvious: the sellers would accept the \$862,000 offer from Patel's buyer clients without any further dealings with other realtors or their clients, and Patel and his

brokerage would reduce the total commission they would earn on the transaction when compared to the 3.5% total commission identified in the listing for the Property.

The sellers could not unilaterally impose a commission reduction on Patel and his brokerage. They would have had to reach an agreement on that issue, which they obviously did. As between the listing brokerage – as represented by Patel – and the sellers, there was consent, certainty of subject matter, and the mutual exchange of consideration.

The sellers benefitted by paying a lower commission on the sale of the Property. In doing so, the sellers saved over \$8,500, something which made the offer from Patel's buyers much more attractive than the stated \$862,000 price in their offer.

Patel and the listing brokerage still benefitted by receiving a 2.5% commission on the transaction, which was greater than the commission they would have obtained if another realtor's buyers had purchased the Property. Indeed, if another realtor had brought a successful buyer to the situation, Patel and the listing brokerage would have received a 1.5% commission, with 2.0% going to the co-operating realtor. Even with the reduced commission on the double-ended transaction, Patel and the listing brokerage came out ahead.

The buyer clients of Patel also benefitted by having their \$862,000 offer for the Property—which was only \$500 more than the next highest offer – accepted without another round of offers taking place. In short, the reduced commission payable by the sellers – which was negotiated with Patel and the listing brokerage – would have pushed Patel's buyer clients well over the finishing line.

The question from an ethical and fairness standpoint, however, is what was disclosed or not disclosed by Patel to other realtors at the crucial time during the evening of February 28, 2022?

The Panel finds that no notification was given by Patel to other realtors of the *existence* of the commission reduction between the listing brokerage and the sellers. The Panel also finds that the evidence established, on a balance of probabilities, that Patel did not raise the issue of a reduced commission on the transaction in the event that his brokerage should bring their own buyers to the situation. There was simply no credible or convincing evidence—apart from Patel’s unsupported assertions – that he raised the issue of any commission reduction with other realtors.

During testimony, Patel stated that he had advised all parties of a “possible” commission reduction. When this testimony was offered, no explanation was given as to what a “possible commission reduction” is or was. Raising possibilities does not provide notice one way or another because the subject matter of a possibility is, in fact, not something that exists at the time of such notice.

Even if one accepts Patel’s testimony at face value, what did Patel do when the “possible” commission reduction became a “reality”, that is, when an actual agreement was reached with the sellers? Patel did nothing. In that respect, one might well conclude that it was the worst-case scenario for Patel and the listing brokerage:

1. There was a warning or notice given to other realtors that a situation could arise where the sellers might be granted a reduction in the commission they had agreed to pay in the transaction; and
2. Having warned other realtors of that possibility, Patel did nothing after actually negotiating a commission reduction agreement with the sellers. Instead, he simply proceeded to double-end the deal without advising other realtors what had transpired and without giving them an opportunity to increase their bids prior to any acceptance of an offer by the sellers.

Taking no steps to provide notice is one thing, but taking an initial step to notify other realtors that a new commission agreement *might arise* in the bidding process, only to fail to advise them of the actual negotiation and conclusion of an agreement (benefiting Patel’s own clients) is quite another.

Patel admitted that he did not make disclosure of a commission reduction agreement in writing. Of course, he had to make that admission because he had sent no faxes, emails, or text messages to other realtors advising them of the existence of the commission reduction agreement he had negotiated with the sellers.

During the hearing, Patel's representative commented that it would have made everyone's life simpler if Patel had disclosed to other realtors in writing the commission reduction agreement.

The Panel finds that, if Patel had done so, there would have been no need for any disciplinary hearing and any allegations by RECO to the contrary would have, on their face, been unfounded. But Patel, as the listing salesperson working for the listing brokerage, was in the driver's seat in the transaction. He made imprudent decisions not to disclose the existence of a commission reduction agreement which benefitted the sellers, his own buyer clients, and the listing brokerage, at the expense of other realtors and their clients.

Given his failure to provide proper notification of the commission reduction agreement, Patel did not give everyone a fair opportunity to purchase the Property. Once the 1% reduction in commission payable by the sellers was factored into the sale price, it put substantially more money into the sellers' pockets where the other realtors were not aware of its impact on the offers that had been submitted by their clients. The undisclosed commission reduction effectively shut down the bidding process and pushed the listing brokerage and its own buyers across the finish line, with added advantage flowing to the sellers.

Contrary to any suggestion by Patel that he did not realize the consequences of the sellers demanding a commission reduction after they reviewed the offer from his buyer clients, the Panel finds that Patel, as an experienced realtor, would have appreciated the immediate advantages it was conferring on him and the listing brokerage by enabling them to double-end the transaction and still obtain a 2.5% commission on the transaction.

Patel would have also appreciated or ought to have appreciated the consequences of not making disclosure of the commission reduction agreement to other realtors prior to the sellers accepting the offer from Patel's buyers.

As a registrant, Patel had an obligation to act in a manner that did not cause his brokerage to be in breach the Code of Ethics. He failed to do so. By his conduct in not making proper disclosures to other realtors, Patel caused his brokerage to contravene section 25 of the Code of Ethics. That situation put Patel in breach of section 2(1) of the Code of Ethics.

With respect to Patel's position that the complainant did not identify commission reduction issues in his original complaint to RECO, such that they should not have been an issue at the disciplinary hearing, RECO rightfully determined during its investigation that there had been a commission reduction agreement and that Patel's conduct had raised questions whether it had been properly disclosed to all relevant parties.

In his response to RECO, Patel provided a written summary identifying the commission reduction agreement. RECO was certainly justified in including that issue in its investigation of the complaint and, in this case, including an allegation relating to that issue in the Allegation Statement. The fact that a complaint does not identify all possible oversights, conduct, or alleged unethical activities does not subsequently bar RECO from including particulars and allegations concerning other acts and omissions in an Allegation Statement and referring them to discipline.

As noted above, if Patel had—as he testified -- disclosed to other realtors that there *might* be a commission reduction in a transaction for the Property, the non-disclosure of an actual agreement subsequently negotiated between the sellers and the listing brokerage would simply make matters worse and underscore the unfairness to other realtors.

When a commission reduction became a fact in Patel's dealings with the sellers, Patel failed dismally in making full disclosure to the other realtors and their clients.

Once the commission reduction became a reality, it was incumbent upon Patel to ensure that the other realtors were notified *before* the sellers accepted an offer conferring an advantage on them.

Patel had a legal obligation to halt the bidding process until he notified all the other offer participants of the commission reduction to give them sufficient opportunity to make necessary inquiries. In the ordinary course, another round of bidding would take place if other would-be buyers made an informed decision (in light of the existence of a commission reduction agreement) to increase their previous offer or offers. That would have been the proper procedure to ensure that all parties were dealt with honestly, fairly and with integrity.

If the parties had been given one more opportunity to improve their offers, the outcome could have been to the advantage of the successful buyer *as well as* the sellers. The result, of course, would depend on the price and other terms of any improved offer. The minimal effort and few minutes it would have taken Patel to make proper disclosure of the commission reduction agreement could very well have created a different outcome for the buyers of another realtor and put additional funds into the pocket of the sellers.

During the process of selling the Property, Patel used BrokerBay, a highly effective communication platform, to keep all representatives informed of the number of offers registered for the Property. With this instantaneous communication platform, which Patel confirmed he had used, it would have taken minimal effort to send an email or direct message to tell other realtors that the sellers and the listing brokerage had agreed to a commission reduction. That information could have included details relating to the commission reduction. But no such disclosure was ever made by Patel.

The public is entitled to have realtors act in a proper manner in a transaction and expect them to abide by the Code of Ethics.

The public must have confidence in the process that has been developed by realtors into which minimum professional standards have been included.

The facts in this case demonstrate that Patel failed to abide by numerous provisions in the Code of Ethics and that he failed to meet the standards that the public could legitimately expect realtors to meet. In addition, all realtors have a right to expect that their colleagues will act in accordance with the norms and requirements of the real estate industry, many of which have been articulated in the Code of Ethics.

If realtors representing their own clients find themselves in a transaction where accepted rules are not respected or where disclosures that should be made are not made, it results not only in unfairness, but it can have significant adverse financial consequences. Equally important, losing out in a real estate transaction where the rules have not been respected reduces professional and public confidence in the system itself.

The Panel has considered that Patel had the opportunity to call witnesses to testify at the hearing to provide supporting evidence for his assertions and positions. In this case, he could have summoned other realtors involved in the transaction for the Property and had them testify whether he had made the disclosures that he claimed he had made. However, he chose not to do so. What the Panel was left with was clear and convincing evidence from Registrant A and Individual A that disclosures required by the Code of Ethics and fairness and integrity in real estate transactions had not been made by Patel.

Also, even though Patel made many assertions about the sellers, including their reasons for accepting the offer from Patel's buyer clients, he chose not to call them as witnesses at the hearing. As a result, and by his own doing, he failed to provide supporting evidence for important assertions he made before the Panel. The Panel was left with hearsay evidence that could have been the subject of direct evidence from the relevant persons.

Patel's claims that the sellers would have accepted the \$862,000 offer from his buyer clients in the absence of any commission reduction became speculation rather than actual

evidence. However, given the price in the offer from Patel's buyers compared to the next highest offer, it stands to reason that the commission reduction would have had a material affect on the transaction, especially for the sellers.

Experienced realtors know that where the two highest offers are only \$500 apart in price, it would ordinarily be in the seller's interest, and the interest of fairness to would-be buyers, to have another round of offer presentations. In this case, the evidence showed that three rather than only two offers were very close in price: One was for \$860,000, one was for \$861,500 and the highest offer - which was delivered by Patel's buyer clients *after* the first two offers had been delivered - was for \$862,000. That situation would obviously give rise to an interest on the sellers' part to ask all three buyer groups whether they wished to improve their offer in a final round of offers.

Instead of that expected process, however, Patel negotiated a commission reduction agreement with the sellers that favoured him double-ending the transaction. The reduction in commission by a full 1% for the listing brokerage did not work to the advantage of other realtors and their clients. It would apply only to a transaction where Patel was representing both sides to the transaction for the Property. The sellers' incentive to accept the \$862,000 offer instead of holding another round of offers from all realtors (interested in doing so) would be obvious. By accepting the \$862,000 offer with no further bidding, the sellers would effectively get over \$8,500 more for their Property because of the saved 1% commission expense.

The impact of that savings on anyone's willingness to hold another round of offer presentations from would-be buyers would have been obvious to anyone, including Patel and the listing brokerage.

In the result, the total commission earned by Patel and his brokerage was 2.5% which, even as a discounted amount from the 3.5% total commission identified in the listing agreement, was a higher commission for Patel than any co-operating realtor would have realized if the latter had provided the buyer in the transaction.

Succinctly stated, Patel did not communicate properly or accurately to the other agents who had submitted offers on behalf of their clients. The Panel finds that the commission reduction was a material factor in the purchase and sale of the Property. Common sense indicates that a commission reduction of over \$8,500 in favour of the sellers would have had a material impact in the offer process, including which offer would likely be accepted. But given the disclosure, fairness, and professional requirements in the Code of Ethics, the other realtors had a right to be informed of the existence of a commission reduction agreement before any offer was accepted by the sellers.

Patel's representative maintained that section 25 was not breached because the sellers would have proceeded with the transaction even without the reduction in commission and, as such, there was no obligation to disclose the reduction.

The Panel rejects this submission and argument. First, section 25 does not outline an exception to the disclosure that must be made prior to the acceptance of an offer. Indeed, there is no exception in section 25 providing that a registrant can avoid making disclosure of a commission reduction agreement if it can be shown that the sellers in a transaction would have accepted an offer (subject to such an agreement) for other reasons.

Second, the suggestion that the obligations in section 25 should be assessed by reviewing the purported reasons of a seller in accepting an offer is not the proper test for applying that provision.

Third, apart from the unsupported assertion by Patel as to the reasons why the sellers accepted the offer from Patel's buyer clients, no evidence from the sellers themselves was presented at the hearing. Even if such evidence had been offered (e.g. by having the sellers testify at the hearing), the language in section 25 is clear and the disclosure obligations are mandatory.

In addition, Patel was not in a position to make a unilateral determination to waive compliance with section 25. Given the financial interest that he and his brokerage had in the transaction for the Property, he should have ensured that his actions were compliant with the Code of Ethics.

The disclosure of the commission reduction agreement was a regulatory (i.e. legal) requirement. It is no excuse to say that nothing would have been different in the outcome of the transaction if there had been no reduction in the commission payable.

Patel's conduct resulted in his breach of the Code of Ethics as well as that of his brokerage (i.e. a violation of section 25 (1)).

Although Patel had disclosed to all parties that he had his own offer, his suggestion that it was Registrant A's responsibility to question him (Patel) whether there was going to be a commission reduction in Patel's dealings with the sellers was misplaced.

Further, the Panel does not agree that it was incumbent on Registrant A to file a complaint with RECO if he believed that Patel had acted improperly in not disclosing the existence of a commission reduction agreement. RECO was within its jurisdiction to investigate the Individual A complaint and surrounding circumstances. That investigation revealed conduct on Patel's part that was both serious and questionable. The evidence presented at the hearing confirmed facts that constituted a breach of all sections in the Code of Ethics cited by the Registrar.

Given the nature of his evidence, and his submissions at the end of the hearing, the Panel is not convinced that Patel appreciates the gravity of his misconduct during the transaction for the Property. In failing to meet significant disclosure obligations in the transaction, Patel also breached sections 2(1), 3 and 39 in the Code of Ethics.

Patel's conduct was unfair to other realtors and their clients, and it did not reflect integrity or honesty on his part. As for section 39, the Panel finds his conduct was unprofessional and unbecoming of a registrant.

During the hearing in cross-examining witnesses and in his closing submissions, the implication by Patel was that any problems or concerns in the transaction had been the responsibility of persons other than himself. He suggested that RECO's allegations had no merit in part because, in his submission, RECO's witnesses were weak and not credible.

At the end of the hearing, the Panel was encouraged to take no action against the registrant in the event of a finding of liability or, alternatively, that the Panel's approach should be marked by leniency, partly because Patel did not understand how matters unfolded in the transaction and the specific obligations under the Code of Ethics.

Choosing not to abide by or follow the rules in the Code of Ethics is not an option for realtors. The Code exists to promote the orderly and proper conduct of business for all persons involved in real estate transactions.

The Code of Ethics is a regulation in Ontario, duly approved by the Legislature. The intention underlying the Code is compliance and where disclosures are mandated they should be made. In this case, it was acknowledged that no written disclosure of the commission reduction agreement was made by Patel. As for alleged verbal disclosure, the overwhelming evidence at the hearing was that no such disclosure had been made. The Panel would add that it would be poor practice and policy for a realtor to rely on verbal disclosure to meet the obligations in section 25 of the Code.

As the *Thapar* decision makes clear, in this day and age of instantaneous transmission and communication, it takes little effort to confirm required disclosures by fax, email, or even text messages. Trying to prove that a mandated disclosure was made verbally can easily fall pray to contradictory evidence from different witnesses, and the faultiness and unreliability of personal memories.

In this case, Patel's failure to comply with sections 2(1) as it related to the brokerage's obligation under section 25, and 39 created an uneven playing field that favoured the offer from his own buyers over all the other offers.

The other realtors and their clients had a right to proper disclosure to enable them to make informed decisions and participate in the bidding process on a fair and even playing field. Unfortunately, they were deprived of that opportunity.

DECISION OF 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:

1. The allegations in the Allegations statement were proven on a balance of probabilities; and
2. Patel breached sections 2(1) as it related to section 25, 3 and 39 of the Code of Ethics in the circumstances.

On the issue of proposed penalty, the Panel orders as follows:

1. Counsel for the Registrar (i.e. the Prosecutor), REBBA 2002, shall deliver written submissions to the Panel and to the Registrant on the issue of penalty and costs within 15 days of the date on which the Panel's decision and reasons are delivered.
2. The Registrant 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 Registrant.

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

If costs are being requested, submissions relating to costs shall be included 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.

The Panel shall deliver its decision on penalty and/or costs after considering the written submissions of the parties.

[Released: October 4, 2024]