

**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 -

ANTON JEEVA ARULAPPU

DISCIPLINE DECISION AND REASONS FOR DECISION

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

FINDINGS: In violation of Sections 5, 37(1) and 38 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$ 8,000.00 payable to RECO on or before October 18, 2022.

Successful completion of the Real Estate Institute of Canada (REIC) "REIC 2600: Ethics in Business Practice" course and provide RECO with confirmation of successful completion on or before October 18, 2022.

WRITTEN REASONS:

REASONS FOR DECISION

INTRODUCTION

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

The Agreed Statement of Facts and Penalty read:

AGREED STATEMENT OF FACTS AND PENALTY

It is agreed as follows:

1. Anton Arulappu (“Arulappu”) who is registered as a broker under the Real Estate and Business Brokers Act, 2002 (“Act”);
2. At all relevant times, Arulappu was employed by Brokerage A.

The parties and complaints

3. Individual A (“CS”) is a consumer and a complainant (“Complaint #1”). CS rented a cottage property from Arulappu, for a vacation with family.
4. Individual B (“RJ”) is a relative of CS who was also a consumer that was vacationing with family. RJ and CS had planned to share a cottage rental property as both families were vacationing together.
5. Individual C (“GF”) is a consumer and a complainant (“Complaint #2”). GF rented a cottage listed by Brokerage A, pursuant to a listing agreement, with the sellers, where Brokerage A was the brokerage and Arulappu was their broker representative.

Complaint #1:

6. On or about August 1, 2018, RECO received a complaint from CS about the conduct of Arulappu, with respect to his involvement with a cottage rental trade.
7. On or about February 18, 2018, Individual B and the Complainant (collectively, “Group A”) observed a cottage listed for rent on the following website: “cottagesincanada.com”.
8. The subject cottage rental property was located at 1-A Street, City A.
9. Arulappu personally owned the 1-A Street.
10. Arulappu personally listed the 1-A Street for rent online.
11. Arulappu listed the 1-A Street with his contact particulars and Brokerage A’s contact particulars.
12. Brokerage A had no knowledge that the 1-A Street was listed with an association to their brokerage, nor were they involved in the trade. Arulappu did not deliver any documents associated with the 1-A Street trade to Brokerage A, nor were brokerage documents used.
13. After reading the listing, the Group A believed the 1-A Street was listed for rent by Brokerage A, with Arulappu acting as their broker representative.

14. On March 9, 2018, pursuant to Arulappu's instruction, the Group A made a first installment payment of \$1,350.00 to Arulappu by e-transfer, for the 1-A Street rental. The Group A paid to secure the 1-A Street during the dates of July 28, 2018 and August 4, 2018. No written contract was provided to the Group A before the first installment payment was made.
15. On or about May 24, 2018 a second and final installment payment of \$1,350.00 was requested by Arulappu and paid to Arulappu by the Group A.
16. On July 24, 2018 Arulappu emailed the Group A and provided details about the 1-A Street and amenities. Arulappu further provided a lock box code for entry access to the 1-A Street.
17. On July 25, 2018 Arulappu emailed the Group A with information about what they may want to bring with them for their stay, along with the check-in time and check-out time.
18. On July 28, 2018, Arulappu emailed the Group A and advised there was a conflict with their reservation for the 1-A Street. Arulappu informed that the 1-A Street would not be available for their use until July 29, 2018, being the next day.
19. The Group A did not receive the July 28, 2018 email before they departed as they were busy packing and preparing for their vacation.
20. On July 28, 2018, at approximately 2:02 p.m., while travelling to the 1-A Street, the Group A received a call from Arulappu, advising that the 1-A Street was double booked and unavailable to them, until July 29, 2018.
21. Arulappu provided the Group A with directions to an alternative property located at 2-B Road, City B (the "2-B Road property").

The 2-B Road property

22. On July 28, 2018, the Group A travelled to the 2-B Road property, for one night of accommodation, as instructed by Arulappu.
23. Upon arrival at the 2-B Road property, the Group A observed several sanitary and safety concerns.
24. Some of the conditions leading to the Group A's sanitary concerns included, among others, the following:
 - Dirty dishes and dirty cutlery in the cupboards and drawers

- Stained and dirty bedding and furniture
 - Food on the floor
 - Garbage in the cupboards
 - Used alcohol bottles left both inside and outside the property
25. Some of the conditions leading to the Group A's safety concerns included, among others, the following:
- Multiple electrical switches missing safety covers
 - Corrosive and explosive chemicals in the bathroom
 - No hand railing on the stairs leading from the top of the boat house to the main floor
 - A water pump at the bottom of the stairs leading from the top of the boat house to the main floor had live unprotected wiring with exposure to electrical shock
 - No smoke or carbon monoxide detectors in any room within the property
 - No fire extinguishers anywhere in the property
26. On July 28, 2018 at approximately 6:35 p.m., the Group A sent a text to Arulappu expressing their concern about the sanitary and safety conditions associated with the 2-B Road property.
27. On July 28, 2018 at approximately 9:13 p.m., Arulappu responded with a text in which he apologized for the rental mistake and informed that the owner was prepared to refund \$500.00 dollars, but Arulappu said he would ensure they would receive a 30% refund in 72 hours.
28. On July 28, 2018, given the unsanitary and unsafe conditions of the 2-B Road property, the adult females and children slept in the family vehicles overnight.

The 1-A Street

29. On July 29, 2018, the Group A travelled from the 2-B Road property to the 1-A Street and observed that it was still occupied by the previous renters.
30. The Group A texted Arulappu and informed that the 1-A Street remained occupied. Arulappu responded and advised that the occupants were leaving in minutes.
31. The Group A expressed concerns about the cleanliness of the 1-A Street to Arulappu, before attending.

32. The Group A drove away from the 1-A Street and returned sometime thereafter.
33. The Group A identified several similar sanitary and safety concerns with the 1-A Street.
34. Some of the conditions leading to the Group A's sanitary concerns included, among others, the following:
- Urine left in the toilets
 - Food left on the floor
 - Food left on furniture
 - Food left on counters
 - Dirty dishes throughout the entire cottage
 - Unwashed bedding left on all beds
 - Dirty towels on the bathroom floor
 - Unemptied garbage left in the bathroom
 - Garbage bags with garbage left in them which smelling like animal feces, hanging on railings
35. Some of the conditions leading to the Group A's safety concerns included, among others, the following:
- Furnace door missing which exposed live wiring
 - Main electrical panel missing protective covering
 - 220-volt outlet for dryer unsecured and left dangling from the ceiling
 - No smoke detectors installed in any room
 - The deck had multiple gaps in the railings which children could fall through
 - Gasoline stored in a shed with container caps missing

Complaint #2:

36. On or about January 21, 2020, RECO received a complaint from GF, expressing concern about Arulappu's conduct regarding a cottage rental property municipally known as 3-C Crescent, City C ("3-C Crescent").
37. GF viewed a Corporation A listing advertising the 3-C Crescent for rent.

38. On or about October 7, 2019 GF contacted Arulappu and enquired about renting the 3-C Crescent for two years.
39. On or about October 7, 2019 Arulappu responded and informed that the 3-C Crescent was fully furnished and would be \$2,995.00 per month.
40. GF and Arulappu agreed that GF would view the 3-C Crescent on the next Sunday afternoon, following their communications.
41. On or about December 2, 2019 GF moved into the 3-C Crescent. There was no written agreement or contract prepared or signed,
42. On or about December 2, 2019 GF paid Arulappu \$500.00 in cash as a first installment towards rent for the 3-C Crescent.
43. On or about December 5, 2019 GF paid Arulappu \$1,000.00 by e-transfer, as rent for the 3-C Crescent.
44. On or about December 20, 2019 GF paid Arulappu \$1,000.00 by cash, as rent for the 3-C Crescent.
45. On or about January 12, 2020 GF paid Arulappu \$1,000.00 by cash, as rent for the 3-C Crescent.
46. On or about January 18, 2020 GF paid Arulappu \$300.00 by e-transfer, as rent for the 3-C Crescent.
47. An agreement to list the 3-C Crescent included a commission equal to one month of rent, paid to Brokerage A. Arulappu GF, in relation to him renting the 3-C Crescent.

SUMMARY OF AGREEMENTS

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

- A. Arulappu made an inaccurate representation when he listed the 1-A Street for rent and included Brokerage A's brokerage contact information in the listing yet deliberately excluded Brokerage A from the trade. The Group A relied on this representation and believed they were trading with Brokerage A. Arulappu's inaccurate representation was contrary to section 37(1) of the Code of Ethics.

- B. Arulappu failed to provide conscientious and competent service to the Group A when he chose not to process any 1-A Street trade documents for the Group A trade, through Brokerage A. Arulappu's actions were contrary to section 5 of the Code of Ethics.
- C. Arulappu misrepresented the sanitary conditions and safety conditions of both the 1-A Street and the 2-B Road property, when he failed to disclose to the Group A that the 1-A Street and 2-B Road property had multiple sanitary and safety concerns, contrary to the listing representation, which the Group A relied upon when selecting the 1-A Street for their vacation rental. Arulappu's misrepresentation was contrary to section 38 of the Code of Ethics.
- D. Arulappu made an inaccurate representation when he listed and advertised the 3-C Crescent for rent and included Brokerage A's brokerage information then deliberately excluded Brokerage A from the trade. Arulappu's inaccurate representation was contrary to section 37(1) of the Code of Ethics.
- E. Arulappu failed to provide conscientious and competent service to GF when he failed to provide GF with a written rental contract or agreement to enter into before renting the 3-C Crescent. Arulappu further failed to provide conscientious and competent service to GF when he accepted cash and e-transfer payments personally, in trust for Brokerage A, then decided to not process the trade through Brokerage A. Arulappu's conduct was contrary to section 5 of the Code of Ethics.

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

Conscientious and competent service, etc.

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

Inaccurate representations

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

Error, misrepresentation, fraud, etc.

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

AGREED PENALTY

ANTON JEEVA ARULAPPU, the Respondent, be ordered to pay a penalty of \$8,000.00 on or before October 18, 2022.

In addition to the above penalty, the Respondent must enrol in the “Ethics in Business Practice” course provided by the Real Estate Institute of Canada (REIC), and provide proof of successful completion of the course on or before October 18, 2022.

By initials below, I, ANTON JEEVA ARULAPPU, acknowledge that I have read and understand the penalty outlined herein and agree to the said terms and/or conditions.

[Respondent's Initials]

By initials below, I, ANTON JEEVA ARULAPPU, agree, understand, acknowledge and consent to waive the requirement for a hearing and to request an Order from the Chair of the Discipline Committee that includes this Agreed Statement of Facts and Penalty as a final settlement of this matter.

[Respondent's Initials]

By initials below, I, ANTON JEEVA ARULAPPU, acknowledge that I exercised my right to be represented by Counsel or agent in this matter.

[Respondent's Initials]

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

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

DECISION OF THE CHAIR

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee (*REBBA 2002*) concluded that the Respondent breached Sections 5, 37(1) and 38 of the *REBBA 2002* Code of Ethics. The Chair of the Discipline Committee (*REBBA 2002*) is also in agreement with the joint submission of the Parties as to penalty and accordingly makes the following order:

1. ANTON JEEVA ARULAPPU is Ordered a Fine of \$8,000.00 payable to RECO on or before October 18, 2022.

2. ANTON JEEVA ARULAPPU is Ordered to successfully complete the Real Estate Institute of Canada (REIC) "REIC 2600: Ethics in Business Practice" course and provide RECO with confirmation of successful completion on or before October 18, 2022.

[Released: January 10, 2022]