

**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 -

XING LU registered as STANLEY LU

DISCIPLINE DECISION AND REASONS FOR DECISION

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

FINDINGS: In violation of Sections 3 and 39 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$ 13,000.00 payable to RECO on or before March 17, 2022.

Successful completion of RECO's "MCE Compliance and Ethics in Real Estate, Part 1, course" and provide RECO with confirmation of successful completion on or before March 17, 2022.

Successful completion of RECO's "MCE Compliance and Ethics in Real Estate, Part 2, course" and provide RECO with confirmation of successful completion on or before March 17, 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. Xing Lu registered as Stanley Lu ("Lu") is registered as a salesperson under the Real Estate and Business Brokers Act, 2002 ("Act").
2. Representative A is employed at Brokerage A. At the relevant time, Representative A was employed at Brokerage B.
3. Lu is employed at Brokerage C.
4. On or about February 18, 2014, Lu purchased a townhouse condo property known municipally as 1-A Street, City A. The multiple listing service ("MLS") listing at the time of this purchase indicated that the Property had two bathrooms.
5. On June 5, 2019, Lu listed the Property for sale. The listing indicated that the Property had three bathrooms, including one in the basement. In the same listing, Lu indicated in the listing: "Sellers and Agent Do Not Warrant Retrofit Status of the Basement".
6. Buyer A (the "Complainant") retained the services of Brokerage B with respect to purchasing a property, with Representative A acting as her buyer representative.
7. On June 8, 2019, the Complainant viewed the Property with Representative A and decided to put in an offer to purchase the Property. The Complainant observed that there was a third bathroom in the basement of the Property.
8. The Complainant's offer was conditional upon receipt of a status certificate; however, this condition was removed by Lu in negotiations and the parties entered into an Agreement of Purchase and Sale with a closing date of June 25, 2019. The Agreement of Purchase and Sale instead obligated Lu to provide a status certificate sometime before the sale closing.
9. On or about June 13, 2019, Lu had received a status certificate from the condominium corporation which indicated as follows:

"No person other than Corporation to...install toilets, bathtubs, wash basins..."

"additions, alterations or improvements: No owner shall make any structural change in or to his unit"

"During an inspection held for the purposes of creating this document, the following observations were noted: Basement bathroom fixtures which had

been reinstalled have been removed and all wall pipes capped as per declaration rules above. It is not known if toilet and shower have been capped and a new laminate floor has been installed.”

“THIS BATHROOM MUST NOT BE RE-INSTALLED AS PER THE DECLARATION, FURTHER INSPECTIONS WILL BE CONDUCTED”

“No alterations or renovations shall be made to this unit without the prior consent of the Board of Directors. All appropriate forms must be completed and approved PRIOR to any work”

10. Lu was also the recipient of a copy of a declaration made by the condominium corporation dated December 15, 1975 that states at Article IX(1)(iii):

“No person other than the Corporation shall make any changes in the common elements or any structural changes to the building or do any act or thing which will impair the structural integrity of the building or remove, repair, alter or install windows, exterior doors, toilets, bathtubs, wash basins, porch, canopies...”

11. Prior to listing the Property Lu ought to have known that the bathroom in the basement was installed contrary to the condo corporation rules.
12. On or about June 13, 2019, Lu provided a copy of the Status Certificate to Representative A and provided him with an explanation as to why the bathroom was being removed.
13. Representative A therefore knew that the bathroom was being removed prior to the completion of the sale of the Property and he failed to bring this to the Complainant's attention.
14. On or about June 27, 2019 and after the sale of the Property was completed, the Complainant received the keys to the Property and discovered that the third bathroom in the basement, previously seen during viewings, was now missing.

SUMMARY OF AGREEMENTS

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

- A. Lu ought to have known that the bathroom in the basement was installed against the condominium corporation rules and did not disclose this during the listing period or during negotiations contrary to sections 3-and 39 of the Code of Ethics.

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

Fairness, honesty, etc.

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

Unprofessional conduct, etc.

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

AGREED PENALTY

XING LU registered as STANLEY LU, the Respondent, be ordered to pay a penalty of \$13,000.00 on or before March 17, 2022.

In addition to the above fine, Respondent must enrol in the MCE Compliance and Ethics in Real Estate, Part 1, and provide proof of successful completion of the course on or before March 17, 2022.

In addition to the above fine, Respondent must enrol in the MCE Compliance and Ethics in Real Estate, Part 2, and provide proof of successful completion of the course on or before March 17, 2022.

By initials below, I, XING LU registered as STANLEY LU, 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, XING LU registered as STANLEY LU, 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, XING LU registered as STANLEY LU, 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 3 and 39 of the *REBBA 2002* Code of Ethics. The Chair of the Discipline Committee (*REBBA 2002*) is also in agreement with the joint submission of the Parties as to penalty and accordingly makes the following order:

1. XING LU registered as STANLEY LU is Ordered a Fine of \$13,000.00 payable to RECO on or before March 17, 2022.
2. XING LU registered as STANLEY LU is Ordered to successfully complete RECO's MCE Compliance and Ethics in Real Estate, Part I, course, on or before March 17, 2022.
3. XING LU registered as STANLEY LU is Ordered to successfully complete RECO's MCE Compliance and Ethics in Real Estate, Part 2, course, on or before March 17, 2022.

[Released: August 18, 2021]