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**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 -**

**MICHAEL CHRISTOPHER LYNCH**

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**DISCIPLINE DECISION AND REASONS FOR DECISION**

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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:

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**FINDINGS:** In violation of Sections 4, 5 and 21(1)(2) of the *REBBA 2002* Code of Ethics.

**ORDER:** Fine of \$ 10,000.00 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. Michael Christopher Lynch (“Lynch”) is registered as a salesperson under the *Real Estate and Business Brokers Act, 2002* (“Act”).
2. Lynch is employed at Brokerage A. At the relevant time, Lynch was employed at Brokerage B.
3. Representative A is employed at the Brokerage C.
4. On or about February 18, 2014, Representative A purchased a townhouse condo property known municipally as 1-A Street, City A “Property”). The multiple listing service (“MLS”) listing at the time of this purchase indicated that the Property had two bathrooms.
5. On June 5, 2019, Representative A listed the Property for sale. The listing indicated that the Property had three bathrooms, including one in the basement.
6. Individual A (the “Complainant”) retained the services of Brokerage B with respect to purchasing a property, with Lynch acting as her buyer representative.
7. On June 8, 2019, the Complainant viewed the Property with Lynch 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 Representative A 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 Representative A to provide a status certificate sometime before the sale closing.
9. On June 9, 2019, Individual A listed her property with Brokerage B, with Lynch acting as the listing representative.
10. On or about June 13, 2019, Representative A 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 a 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”*

11. Representative A 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...”*

12. On or about June 13, 2019, Representative A provided a copy of the Status Certificate to Lynch by email attachment. In a later conversation Representative A tried to provide Lynch with an explanation as to why the bathroom had to be removed.
13. The Status Certificate was subsequently emailed to Individual A's solicitor by both Representative A and Lynch, to ensure delivery.
14. Individual A did not attend the property for any additional viewings prior to the completion date.
15. 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.
16. Prior to listing the Property Representative A knew or should have known that the bathroom in the basement was installed contrary to the condo corporation rules.
17. Lynch knew that the bathroom was removed prior to the completion of the sale of the Property and he failed to bring this to the Complainant's attention.

#### SUMMARY OF AGREEMENTS

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

- A. Lynch knew that the basement bathroom had been removed prior to the completion of the sale of the Property and he failed to inform his client, contrary to sections 4, 5, and 21 of the Code of Ethics.
- B. Prior to the completion of the sale of the Property Lynch knew or ought to have known, that there may be a problem with the permitting of a basement bathroom under the condominium corporation rules and he failed to inform his client, contrary to sections 4, 5, and 21 of the Code of Ethics.

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

Best interests

4. A registrant shall promote and protect the best interests of the registrant's clients.

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.

Material facts

21. (1) A broker or salesperson who has a client in respect of the acquisition or disposition of a particular interest in real estate shall take reasonable steps to determine the material facts relating to the acquisition or disposition and, at the earliest practicable opportunity, shall disclose the material facts to the client.

(2) A broker or salesperson who has a customer in respect of the acquisition or disposition of a particular interest in real estate shall, at the earliest practicable opportunity, disclose to the customer the material facts relating to the acquisition or disposition that are known by or ought to be known by the broker or salesperson.

**AGREED PENALTY**

MICHAEL CHRISTOPHER LYNCH, the Respondent, be ordered to pay a penalty of \$10,000.00 on or before March 17, 2022.

In addition to the above fine, Respondent must enrol in RECO's 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 RECO's 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, MICHAEL CHRISTOPHER LYNCH RESPONDENT, 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, MICHAEL CHRISTOPHER LYNCH, 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 incRepresentative Ades this Agreed Statement of Facts and Penalty as a final settlement of this matter.

*[Respondent's Initials]*

By initials below, I, MICHAEL CHRISTOPHER LYNCH, 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*) concRepresentative Aded that the Respondent breached Sections 4, 5, and 21(1)(2) 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. MICHAEL CHRISTOPHER LYNCH is Ordered a Fine of \$10,000.00 payable to RECO on or before March 17, 2022.
2. MICHAEL CHRISTOPHER LYNCH is Ordered to successfully complete RECO's MCE Compliance and Ethics in Real Estate, Part I, course, on or before March 17, 2022.
3. MICHAEL CHRISTOPHER LYNCH 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]*