

**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 -

LINDA LORRAINE EVANS registered as LINDA EVANS

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, 7(1), 38 and 39 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$ 9,000.00 payable to RECO on or before April 11, 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. Evans is and at all relevant times was employed by Brokerage A.

2. Representative A, the complainant, was at all relevant times registered as a salesperson with Brokerage B.
3. Corporation A (“Sellers”) was the owner of a property located at 1-A Street, City A (“Property”).
4. On October 7, 2019, the Sellers entered into a Listing Agreement with Brokerage A, with Evans as their listing sales representative to list the Property on the Multiple Listing Service commencing on October 7, 2019 and ending on January 31, 2020. The Property was listed for sale with a price of \$750,000, a 2.5% commission payable to Brokerage A and a 2.5% commission payable to the co-operating brokerage.
5. On October 7, 2019, a buyer, Buyer #2, entered into a Buyer Representation Agreement (“BRA #1”) with Brokerage B, with Representative A as their sales representative. BRA #1, commencing on October 7, 2019 and set to end on November 4, 2019.
6. On October 8, 2019, at approximately 2:00 p.m., a buyer, Buyer #1, entered into a Buyer Customer Service Agreement with Brokerage A, with Evans as their sales representative, commencing on October 8, 2019 and ending on October 9, 2019.
7. On October 8, 2019, at approximately 1:33 p.m., Representative A, on behalf of Buyer #2, prepared and submitted an Agreement of Purchase and Sale (“APS #1”). Following are the terms of APS #1:
 - Purchase Price: \$750,000
 - Deposit: \$5,000
 - Irrevocability: October 8, 2019 until 6:00 p.m.
 - Completion Date: November 1, 2019
 - Conditions: Financing and Inspection
8. On October 8, 2019, Evans, on behalf of Buyer #1, prepared and submitted an Agreement of Purchase and Sale (“APS #2”). Following are the terms of the APS #2:
 - Purchase Price: \$750,000
 - Deposit: \$5,000
 - Irrevocability: October 8, 2019 until 5:00 p.m.
 - Completion Date: November 1, 2019
 - Conditions: None
9. On October 8, 2019, at approximately 4:00 p.m., the Sellers accepted APS #2 submitted by Evans on behalf of Buyer #1.
10. On October 24, 2019, the Sellers and Buyer #1 entered a mutual release terminating APS #2.
11. On October 24, 2019, at approximately 12:30 p.m., Buyer #2 entered into a Buyer Representation Agreement (“BRA #2) with Brokerage A, with Evans as the sales representative, commencing on October 24, 2019 and ending on March 31, 2019. Buyer #2 was now entered into two separate Buyer Representation Agreements, BRA #1 with Brokerage B and BRA #2 with Brokerage A.

12. On October 24, 2019, Evans, on behalf of Buyer #2, prepared and submitted an Agreement of Purchase and Sale ("APS #3"). Following are the terms of the APS #3:
 - Purchase Price: \$750,000
 - Deposit: \$10,000
 - Irrevocability: October 25, 2019 until 11:59 a.m.
 - Completion Date: December 27, 2019
 - Conditions: None
13. On October 24, 2019, at approximately 5:41 p.m., the Sellers accepted APS #3.
14. On or about October 24, 2019, Evans filed an Amendment to APS #3, changing the closing date to January 31, 2020.
15. On or about November 8, 2019, Evans filed a second Amendment to APS #3, adding Buyer #3 as a purchaser.
16. On or about November 27, 2019, Buyer #3 entered into a Buyer Representation Agreement ("BRA #3) with Brokerage A, with Evans as the sales representative, commencing on November 27, 2019 and ending on March 31, 2020.
17. On or about January 2020, Representative A learned that Buyer #2 purchased the Property through Brokerage A, by way of Evans.
18. On March 2, 2020, Representative A filed a complaint with RECO regarding the conduct of Evans.
19. On or about April 24, 2020, Representative A filed an arbitration claim with the Real Estate Board against Evans and Brokerage A.
20. On or about January 8, 2021, the arbitration claim was settled with Evans and Brokerage A paying \$16,950 to Representative A and Brokerage B.

SUMMARY OF AGREEMENTS

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

- A. Evans failed to take reasonable steps in verifying the existence of a Buyer Representation Agreement when she contacted a buyer whom she knew or ought to have known was represented by another brokerage, contrary to Sections 3, 7(1), 38 and 39 of the Code of Ethics.

It is agreed that Evans 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.

Dealings with other registrants

7. (1) A registrant who knows or ought to know that a person is a client of another registrant shall communicate information to the person for the purpose of a trade in real estate only through the other registrant, unless the other registrant has consented in writing.

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.

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

LINDA LORRAINE EVANS registered as LINDA EVANS, the Respondent, be ordered to pay a penalty of \$9,000.00 on or before April 11, 2022.

By initials below, I, LINDA LORRAINE EVANS registered as LINDA EVANS, 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, LINDA LORRAINE EVANS registered as LINDA EVANS, 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, LINDA LORRAINE EVANS registered as LINDA EVANS, 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, 7(1), 38 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. LINDA LORRAINE EVANS registered as LINDA EVANS is Ordered a Fine of \$9,000.00 payable to RECO on or before April 11, 2022.

[Released: August 19, 2021]