



**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 -**

**DENISE EILEEN LIBOIRON**

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**DISCIPLINE DECISION AND REASONS FOR DECISION**

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The Panel met by videoconference on Nov 10, 2022 to discuss the written submissions with respect to Penalty and Costs. The Panel decided as follows:

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**ORDER:** Fine of \$6,500.00 payable to RECO within one (1) year of sending this decision.

**WRITTEN REASONS:**

**REASONS FOR DECISION ON PENALTY AND COSTS**

**INTRODUCTION**

The Discipline Hearing on this matter was held on July 26, 2021 and the Panel issued its reasons for the decision on August 30, 2022. In this Decision, the Panel found that the Registrant had failed to comply with sections 3, 38 and 39 of the Code of Ethics.

**Submission on Penalty by the Registrar:**

In the written submissions for the Registrar, Counsel for the Registrar provided a summary of the Panel's findings, in particular:

- a) the Registrant did not independently verify important listing information provided by the seller;
- b) the Registrant did not make best efforts to prevent error in the MLS listing;

- c) the Registrant relied on property tax information from the Seller which she acknowledged to be a low figure and did not take extra steps to verify the correct information;
- d) the Registrant had an extra level of familiarity with the property having been involved as the Buyer's Representative for the purchase in 2017.

Counsel for the Registrar submits that in determining the appropriate penalty, the following factors from the Registrar v. Suzette Thompson, Appeals Committee of RECO, May 31, 2012, be used as a framework:

- a) the nature and gravity of the breaches of the Code of Ethics;
- b) the role of the offending member in the breaches;
- c) whether the offending member suffered or gained because of the breaches;
- d) the impact of the breaches on the complainant or others;
- e) the need for there to be specific deterrence to protect the public;
- f) the need for there to be general deterrence to protect the public;
- g) the need to maintain the public's confidence in the integrity of the profession;
- h) the degree to which the breaches are regarded as being outside the range of acceptable conduct; and
- i) the range of sanctions in similar cases.

Counsel for the Registrar made the case for a significant penalty in this situation. General deterrence is needed, and an important message sent to the profession that due diligence required by the Code of Ethics must be complied with and is of the utmost importance. Ensuring that the public's confidence in the integrity of the profession is maintained is another important factor. In the Registrant's role as the listing representative, she failed to ensure important property information was advertised accurately which was problematic given its importance to the buyer and other parties that relied on this information.

As such, the Registrar seeks an order that the Registrant pays a fine of \$7,000 and require the Registrant to complete the RECO Mandatory Continuing Education: Compliance and Ethics in Real Estate Parts 1 and 2 Course, both within 180 days of the Decision of the Panel. There was no request for costs related to the hearing.

**Submission on Penalty by Registrant:**

In written submissions, the Registrant noted that she did review the interim property tax bill for the property, as well as calling the property tax department for the township. This was in addition to viewing the MPAC and Geowarehouse Registry data for the property to confirm the tax rate. The Registrant submits that the property tax rate changed from the lower farm tax rate to the higher residential tax rate between the time the listing was signed and the final closing for the purchase. The Registrant thought this change in tax rate may have been due to the Seller not applying to continue the lower farm tax rate.

As such, the Registrant is seeking to limit the fine to \$1,500, equal to the discrepancy in the property tax information on the listing, or to have the fine waived completely. The Registrant is also willing to take any RECO Update Course or equivalent in lieu of the fine or public record of the decision.

#### **THE PANEL'S DECISION ON PENALTY:**

After carefully considered the submissions of both parties and using the framework set out in the Thompson case, *supra*, the Panel has come to the following conclusions:

- a) *Nature and gravity of breach* – the incorrect property tax information did put the buyer at a material disadvantage in purchasing the property. This was a negligent breach but by no means fraudulent in nature.
- b) *Role of the member in the breach* – The Registrant's role was principal in the breach. It was her responsibility to verify the information.
- c) *Whether the member suffered or gained because of the breach* – The Registrant did gain directly by completing the sale and earning a commission.
- d) *Impact of the breach on the complainant or others* – The actual annual property taxes were \$1,500 higher (over 40%) than the amount stated on the listing. The buyer stated she was overextended financially and also would have had trouble qualifying for the mortgage had she and her lender known the actual amount of the annual property taxes prior to closing.
- e) *Need for specific deterrence to protect the public* – The Panel found that the Registrant was generally conscientious in her conduct but came up short in this matter regarding

the property tax verification. There is a need for specific deterrence to prevent this from happening again.

- f) *Need for general deterrence to protect the public* – There is a need for general deterrence to send a clear message to other registrants that due diligence on material facts on listings is an obligation.
- g) *Need to maintain the public's confidence* – The public's trust in the profession and its ability to self-regulate its members is paramount. Any breaches to the Code of Ethics by members needs to be addressed accordingly.
- h) *Degree to which the breaches are outside the range of acceptable conduct* – Failure to verify important information on listings falls within the mid-range of unacceptable conduct. It breached her obligations to the seller, the buyer and members of the public.
- i) *Range of sanctions in similar cases* – 4 similar cases were submitted for consideration by the Panel with penalties ranging from \$5,000 to \$9,000 for misrepresentation of important listing facts and annual property tax errors ranging from \$800 to \$1,100. Given that some verification was done, the breach in this case falls in the middle of the range of similar cases.

**PENALTY:**

This Panel hereby orders the Registrant to pay a fine of \$6,500 within 1 year of the release of this decision.

*[Released: April 14, 2023]*



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

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**DISCIPLINE DECISION AND REASONS FOR DECISION**

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**APPEARANCES:**

**For the Registrant:**

No one

**For the Real Estate Council of Ontario:** Dipak Parmar, paralegal

**Heard in Toronto on:**

July 26, 2021

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**FINDINGS:**

In violation of Section 3, 38 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 July 26, 2021 in the presence of the Respondent Denise Eileen Liboiron (the “Respondent” and/or “Liboiron”). Dipak Parmar, Paralegal for the Real Estate Council of Ontario. The Panel was comprised of Liem Vien, Ray Bergie and Harold Arkin. A. Maria Bursey was present as independent legal counsel to the Discipline Panel.

Prior to the commencement of the hearing, the Respondent was given an opportunity to confirm that she wanted to proceed with self-representation for the hearing and after a brief discussion, she decided to proceed with the hearing.

The Panel was asked by the Respondent to consider keeping the hearing confidential. The Panel decided, after deliberation, that confidentiality wasn’t warranted, and it was in the community’s best interests to keep the hearing open to the public.

#### **ALLEGATIONS BY THE REGISTRAR, REBBA 2002**

In its Allegation Statement the Registrar, *REBBA 2002* alleged that Liboiron acted unprofessionally when:

Liboiron failed to take adequate steps to verify the taxes before making a representation on the MLS®, contrary to sections 3, 38 and 39 of the Code.

**It is alleged that Liboiron 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 within the course of a trade in real estate fairly, honestly and with integrity.

**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

**EVIDENCE OF THE PARTIES**

1. Allegation Statement dated January dated December 27, 2019
2. Notice of Hearing dated June 9, 2021
3. RECO Book of Documents dated June 9, 2021

**WITNESSES FOR THE REGISTRAR, REBBA 2002**

1. Individual A

The buyer in the transaction was Individual A (the "Buyer" and/or "Individual A"). She testified by videoconference. Individual A recalled that she was given the listing information sheet for the property with property taxes of \$3,600.00 for 2018 and did not see the "Brokerage Remarks" section noting that buyers were to perform their own due diligence on the property taxes. Shortly before closing, her lawyer informed her the property taxes for 2018 were \$5,158.22 and were \$5,522.18 for 2019. Individual A thought, had she known the correct property tax amounts, she would have been overextended financially and would not have qualified for the mortgage.

On cross examination, when asked why she proceeded with the purchase, Individual A said she wasn't made aware of it in time to back out and proceeded anyway. Individual A was also asked about property documents left on the dining table during the home inspection, which she said she did not see.

2. Representative A

Representative A was the sales representative for Individual A and testified by videoconference. He noted that the property taxes were \$3,600.00 for 2018 in the listing. He recalled being at the

property during the home inspection with his wife, who was his assistant. He said Liboiron was at the inspection, but they did not interact.

On cross examination, Representative A was told that Liboiron pointed to documents on the dining room table (documents that included property tax bills, utility bills, well records, etc), but Representative A did not recall that and said that neither he nor his wife received any documents from Liboiron.

### 3. Compliance Officer A

Compliance Officer A is a RECO Compliance Officer, who took carriage of the file in February 2021, obtained a copy of the MLS Data Input Form which stated “Hobby farm potential and property previously approved for farm tax rate. Buyer to perform due diligence.” It was also found, after RECO received the listing documents from Liboiron’s Broker of Record, that there were two separate listings for the property and the brokerage remarks differed slightly between the listings. The listing for the subject sale did not include a caution to the buyer to perform due diligence regarding taxes.

## **WITNESSES FOR THE RESPONDENT**

### 1. Denise Liboiron

Liboiron testified by videoconference. She testified that during the listing consultation she was told by the seller that the property was taxed at the farm rate and property taxes for 2018 were \$3,600.00 and produced text message evidence of that conversation. The figure was acknowledged at the time to be low and Liboiron later looked up the property registry information on the Geowarehouse and the Municipal Property Assessment Corporation systems to confirm property tax classification. Liboiron stated that she saw the property tax bill showing taxes of \$3,600.00 for 2018 and left a copy for the buyer at the house during the inspection, but she did not keep a copy. She did not attempt to confirm the property taxes with the municipality. She also testified that she was the buyer agent when the property was purchased by the seller in 2017.

On cross examination, Liboiron did not understand why the property reverted back to the higher residential rate. She said the property was listed again after the first listing expired and on the second listing had run out of space to note that the “buyer to perform due diligence on taxes”.

## **SUBMISSIONS FOR THE REGISTRAR, REBBA 2002**

The Registrar, in its submissions, alleged that the Respondent breached the Code of Ethics by:

- a) Failing to independently verify the current property taxes for the property listing;
- b) Represented inaccurate property tax information on the MLS (Multiple Listing Service) listing, which Individual A relied upon to make a purchasing decision.

## **SUBMISSIONS FOR THE RESPONDENT**

The Respondent, in her submissions, maintained that she did not breach the Code of Ethics as she:

- a) Relied on the seller's text message response for the current property tax amount and confirmed the property tax classification online;
- b) Disclosed in the Realtor's Remarks section of the MLS listing that the property was previously approved for a lower farm tax rate and that the buyer was to perform his or her own due diligence.

## **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.

## **FINDINGS BY 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:

**Section 3 – Fairness, honesty, etc.** The Panel has found Liboiron in violation of Section 3 for not independently verifying important listing information provided by the seller. The current property taxes are a material fact relied on by potential buyers when making a purchasing decision and are used by lenders to qualify buyers for a mortgage. Potential buyers and other stakeholders in a real estate transaction should expect to be treated fairly and with integrity and be able to rely on information posted by a registrant on an MLS listing.

During her testimony, Liboiron said that a copy of the current property tax bill was left on the table during the buyer's property inspection, which was conducted within the conditional period of the purchase agreement. The buyer and the buyer's agent did not confirm seeing the current property tax bill at that time and continued to rely on the information provided on the MLS listing. The panel finds that this step was insufficient in clarifying the information.

**Section 38 – Error, misrepresentation, fraud, etc.** The Panel has found Liboiron in violation of Section 38 by not making best efforts to prevent error or misrepresentation in the MLS listing.

In preparing the MLS listing details, Liboiron did ask the seller directly for the current property taxes and produced documentary evidence of the discussion. The seller's text message reply of \$3,600.00 was acknowledged to be a low amount by Liboiron. Liboiron said the seller's explanation was that it was based on the lower hobby farm tax rate. While Liboiron subsequently did produce a screen shot of a Geowarehouse report showing the property classified as a 'Farm with residence', that information on its own isn't enough to confirm the actual dollar amount of the current property taxes.

**Section 39 – Unprofessional conduct, etc.** The Panel has found Liboiron in violation of Section 39 by engaging in unprofessional conduct by failing to take extra steps to verify the correct property taxes. In her testimony Liboiron acknowledged that she wouldn't always take information provided by clients at face value and would verify details where possible. In this situation the correct information could be verified by reviewing the property tax bill, making a copy for her file and then ensuring a copy was delivered to the buyer's agent.

Liboiron also had an extra level of familiarity with the property as she was the buyer agent when the property was purchased two years prior in 2017 and any material change to the property taxes should have warranted further investigation and verification. Adding a disclaimer to the Realtor Remarks section of the MLS listing that the 'buyer to perform due diligence' on the lower farm tax rate falls short of conduct expected of a registrant in this type of situation.

### **PENALTY**

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 five (5) days of the date on which the Respondent's submissions on penalty and costs are delivered to Counsel for the Registrar, *REBBA 2002*.

If appropriate, submissions to be made on costs and expenses 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.

*[Released: August 30, 2022]*