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**IN THE MATTER OF AN APPEALS HEARING HELD PURSUANT TO THE *REAL ESTATE BUSINESS BROKER'S ACT, 2002***

**B E T W E E N:**

**REAL ESTATE COUNCIL OF ONTARIO  
("RECO")**

- and -

**MAHESH OMPRAKASH KHATRI registered as MAHESH KHATRI**

-and-

**BHANUPIYA KHATRI registered as RAKHEE KHATRI**

("Registrants")

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**APPEALS COST DECISION AND REASONS FOR DECISION**

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**ORDER:**

The Appeal Panel orders that the Registrants shall pay costs of \$6,000.00 jointly and severally to the Real Estate Council of Ontario

**WRITTEN REASONS:**

**REASONS FOR DECISION ON COSTS**

1. For the reasons outlined herein, the Appeal Panel orders that the Registrants shall pay costs of \$6,000.00 jointly and severally to the Real Estate Council of Ontario ("RECO")

## BACKGROUND

2. The Appeal in this matter was heard on May 30, 2025, and the Appeal was dismissed (“**Appeal Decision**”). The Registrar seeks costs of the Appeal and of a motion brought by the Registrants in the proceeding.
3. In determining the costs issue in this Appeal, the background of the proceeding including motions, deadlines for filing material, etc. needs to be considered.
4. The Panel has received and reviewed the Costs Submissions delivered by the parties.
5. Briefly, this Appeal was brought by Mahesh Omprakash Khatri registered as Mahesh Khatri (herein “**Mahesh**”) and Bhanupiya Khatri registered as Rakhee Khatri (herein “**Rakhee**”) (collectively referred to as “**Registrants**”) to a Panel of the Appeals Committee (herein “**Appeal Panel**”) from a decision of the Discipline Committee (herein “**Discipline Panel**”) under the former *Real Estate Business Broker Act, 2002* (“**REBBA**”)<sup>1</sup> and the Appeal was heard by the Appeal Panel on February 19, 2025.
6. At the Appeal Hearing, Mahesh and Rakhee were represented by Howard Manis (herein “**Mr. Manis**”) and Daniel Litsos (herein “**Mr. Litsos**”) of Manis Law, with Mr. Litsos making submission in person for the Registrants. RECO, specifically the Registrar (“**Registrar**”), was represented by Michael Collis (herein “**Mr. Collis**”).
7. The decision of the Discipline Panel was released on May 6, 2022 (herein “**the Decision**”). The Discipline Panel found that as between them Rakhee and Mahesh had breached Sections 3, 4, 27, 37, 38 and 39 of the Code of Ethics under *REBBA* (herein the “**Code**”). The Discipline Panel ordered a Fine of \$20,000.00 against Mahesh and \$15,000.00 against Rakhee. Both Registrants were also ordered to

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<sup>1</sup> The Act has been replaced with the [Trust in Real Estate Services Act, 2002](#) (“**TRESA**”), which came into force on December 1, 2023.

complete Part 1 and 2 of the Compliance and Ethics in Real Estate course provided by RECO.

8. The Discipline Panel adjudicated in writing by way of an Agreed Statement of Facts and Penalty (“**ASFP**”) duly signed by both Registrants, along with an executed Waiver of Hearing. The pertinent facts as set out in the ASFP are attached as **Schedule ‘A’** of this decision, along with the Waiver of Hearing attached as **Schedule ‘B’**.
9. The Registrants, upon receiving the Decision, did not appeal within the thirty (30) day period provided for in the Code, however, they did indicate their intention to appeal the Decision.
10. There were procedural steps undertaken by the Registrants in this proceeding, as will be discussed below, which were unwarranted and resulted in unnecessary time waste. These were considerations taken into account by this Appeal Panel in addressing the request for costs.
11. Having failed to file their Notice of Appeal in the timeframe required by the Code, the Registrants brought a motion to extend the time to appeal the Decision (herein “**Leave Motion**”). This Appeal Panel heard the Leave Motion on April 28, 2023, and on July 19, 2023, this Appeal Panel granted leave for the Registrants to file their appeal, with terms including that the Registrants deliver their Factum and Brief of Authorities within 30 days of the date of the Appeal Panel’s decision on the Leave Motion. Costs were not sought, nor reserved.
12. The Registrants did not perfect their Appeal within the timeframe set out in the decision on the Leave Motion. On September 30, 2024, the Registrants brought a Motion to the Appeal Panel seeking to introduce a transcript from civil proceedings as fresh evidence at the Appeal (herein “**Fresh Evidence Motion**”). The Fresh Evidence Motion was heard on July 25, 2024, and denied on September 30, 2024, though the Appeal Panel granted the Respondents leave to perfect the Appeal and

file a Factum and Brief of Authorities without the transcript. Costs of this motion were reserved for the Appeal Panel hearing this Appeal on its merits.

13. This Appeal Panel dismissed the Appeal on May 30, 2025.

## **SUMMARY OF SUBMISSIONS**

14. Mr. Collis makes straight forward submissions on the costs issue. The Registrar seeks \$6,000.00, or \$3,000.00 per day for the Fresh Evidence Motion and the Appeal on its merits. In the Registrar's view, both the Fresh Evidence Motion and Appeal were frivolous, vexatious and unreasonable. Even further and concerning to the Registrar was the fact that the Registrants relied upon evidence at the Appeal on its merits, where it was procedurally improper and not within the framework of the Appeal. Furthermore, the Registrar submits that the Appeal itself did not have validity, or real merit.

15. Mr. Litsos, for the Registrants, submits that the Appeal was pursued in good faith, and the amount sought is on the high end of the spectrum for costs and could serve to discourage parties from appealing, especially self-represented parties or resources-constrained individuals. The Registrants submit that the test for conduct to be found unreasonable, frivolous or vexatious in this Appeal has not been met. In the alternative, it is submitted that any costs ordered would be overly punitive and be a significant financial burden on the Registrants, if imposed.

## ANALYSIS

16. *Rule 17.01* of the *Discipline and Appeals Committee Rules of Practice* (“**Rules**”) permits the Panel to order costs if the conduct of a party has been unreasonable, frivolous or vexatious or a party has acted in bad faith.<sup>2</sup>
17. *Rule 17.02* sets out the schedule of the maximum costs in particular circumstances, including the actual reasonable disbursements and expenses, with the allocation of the maximum amount, if a party is self-represented, has an agent or is represented by counsel.<sup>3</sup>
18. There is no question that the Appeal Panel has authority to award costs.<sup>4</sup> The mere fact that a party is unsuccessful in their Appeal or Motion does not automatically mean their conduct falls within the four (4) factors outlined in *Rule 17.01*. If there is no evidence to support any of the factors, costs are not awarded.<sup>5</sup>
19. The question for the Panel is whether the Registrants were unreasonable, frivolous, vexatious or acted in bad faith in these proceedings. Having considered the factors under *Rule 17*, it is the Panel’s finding that costs are warranted based on the unreasonable and frivolous conduct of the Registrants in these Appeal proceedings.

### **Unreasonable and Frivolous Conduct of the Registrants**

20. Unreasonable conduct includes but is not limited to, behavior that needlessly increases costs or time, ignores Directions or Rulings or is a misuse of the Tribunal process. The Registrants in this case increased time required to address the proceeding and ignored Orders with respect to this matter.

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<sup>2</sup> Rule 17.01 of the Rules

<sup>3</sup> *Rule 17.02* of the *Rules*

<sup>4</sup> See [Registrar REBBA v. Jolly 2016 ONSC 2338 \(CanLii\)](#), para. 6

<sup>5</sup> See for example [Registrar REBBA v. Jolly 2016 ONSC 2338 \(CanLii\)](#), para. 11

21. In the Fresh Evidence Motion, it was noted by this Panel that none of three (3) factors as set out in *Rule 18.01(11)* of the Rules were met. Specifically, *Rule 18* requires that all the factors be met in order to allow fresh evidence. Furthermore, although the Appeal Panel recognizes the underlying principle of whether the fresh evidence would affect the result, in this case it was ruled it would not. In addition, the Registrants had to overcome the deemed undertaking rule in even having the proffered evidence permitted before any proceedings in this matter. The Appeal Panel agrees with the Registrar, the Fresh Evidence Motion lacked any merit or foundation. The evidence would not have assisted the Registrants in the Appeal.

22. Even further, the “fresh evidence” proffered concerned alleged inconsistencies in the Complainant’s statements, said to impeach credibility. Credibility is quintessentially for the trier of fact at first instance; an Appeal is not a *de novo* hearing, nor a vehicle to re-argue the case or re-weigh evidence. Absent a demonstrated palpable and overriding error in factual findings (or an extricable error of law), appellate intervention is unwarranted. Here, the Registrants executed a Waiver of Hearing and proceeded on an ASFP voluntarily, unequivocally, and with understanding thereby supplanting *viva voce* evidence with a settled record.

23. In other words, had the Registrants sought to adduce proper fresh evidence directed to a recognized basis for setting aside the ASFP— e.g., that the consent was not voluntary, unequivocal, and informed, etc., the Motion would have been a tenable issue warranting adjudication. The Registrants did not proceed on that footing. Instead, the Motion as framed served only to prolong the proceedings and impose needless cost on the Registrar. As set out in *Registrar v. Nina Deeb*, Discipline Committee, September 15, 2021, ill-conceived, unfounded motions must be strongly discouraged.

24. Of note as well, at the time of the Fresh Evidence Motion, the Registrants had not perfected the Appeal, nor served their Factum and Brief of Authorities as required by

*Rule 18.* While the Registrar did not object to this procedural lapse, the incident is indicative of a broader course of conduct in these proceedings.

25. As the Appeal Panel observed, it was surprising that, despite the Registrants knowing, or at least having reason to know, that the affidavit they filed on the Fresh Evidence Motion did not form part of the record on appeal and that the governing procedure confines the Appeal to the existing record absent an Order admitting fresh evidence, they nevertheless sought to deploy the affidavit on the merits and refer to it in argument on the Appeal, thereby necessitating responsive submissions from the Registrar and occasioning unnecessary expense. In any event, even if admitted, the affidavit would not have advanced any cognizable ground of appeal. The affidavit was properly tendered, if at all, solely in support of the Fresh Evidence Motion; the attempt to repurpose it for the merits of the Appeal was improper.

26. These circumstances demonstrate that the conduct of the Registrants was unreasonable and frivolous in the circumstances.

27. The Panel appreciates the Registrants' submission that costs must be approached with caution to avoid a chilling effect on bona fide appeals. That said, the cautionary principle is tempered by the countervailing need to deter unmeritorious proceedings and to safeguard the integrity of the process. As *Registrar v. Jane Moysey & Tri-W Realty Inc.*, Discipline Committee Decision, February 20, 2013,<sup>6</sup> illustrates, costs may properly be visited on either party where a proceeding is pursued on insubstantial grounds—there, against the Registrar for advancing allegations unsupported by evidence and premised on unparticularized legal assumptions. The same principle applies here.

28. This Appeal had no realistic prospect of success. The Registrants sought to set aside a consent ASFP, yet advanced grounds with little to no bearing on the narrow bases

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<sup>6</sup> RECO's Submissions on Costs – Book of Authorities, Tab 2, page 12-16

upon which such orders may be set aside. The associated motions did not meet the governing thresholds and the finality of the consent order.

29. In this context, a costs award is a necessary instrument of process control. It curbs the advancement of meritless appeals, prevents the appellate forum from being used to re-litigate settled matters, and safeguards the integrity and efficiency of the Panel's proceedings. In exercising this authority, the Panel conserves adjudicative resources and protects parties from needless expense, without discouraging bona fide appeals.

30. On a final note, the *Rule 17.02* schedule does not address whether harmonized sales taxes ("HST") is in addition or included. The Registrar does not seek HST in addition to the costs, as such HST will not be ordered in addition to the costs.

31. For the reasons stated herein, the Registrants are ordered to pay costs of \$6,000.00 jointly and severally to the Registrar. The costs are to be paid within thirty (30) days of the delivery of this Decision to the Registrants.

[Released: November 14, 2025]

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**IN THE MATTER OF AN APPEALS HEARING HELD PURSUANT TO THE *REAL ESTATE BUSINESS BROKER'S ACT, 2002***

**BETWEEN**

**REAL ESTATE COUNCIL OF ONTARIO**

**- and -**

**MAHESH OMPRAKASH KHATRI registered as MAHESH KHATRI**

**- and -**

**BHANUPIYA KHATRI registered as RAKHEE KHATRI**

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**APPEALS DECISION AND REASONS FOR DECISION**

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**APPEARANCES:**

<b>For the Registrant:</b>	Daniel Litsos
<b>For the Real Estate Council of Ontario:</b>	Michael Collis
<b>Heard in Toronto:</b>	February 19, 2025

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**FINDINGS:** The Appeal is dismissed.

**ORDER:** The Discipline Committee's Decision, dated May 6, 2022, is upheld and amended as to time for payment of the monetary penalty, costs and the date the Registrants have to complete educational courses.

An Order affirming the Order of the Discipline Committee against Mahesh Omprakash Khatri registered as Mahesh Khatri with respect to its monetary penalty dated May 6, 2022, and imposing a Fine of \$20,000.00 payable to RECO within 120 days of sending this Appeal Decision.

An Order affirming the Order of the Discipline Committee against Bhanupriya Mahesh Khatri registered as Rakhee Khatri with respect to its educational penalty, dated May 6, 2022 regarding successful completion of RECO MCE Compliance and Ethics in Real Estate, Parts 1 and 2, course, and provide RECO with confirmation of successful completion within 180 days of sending this Appeal Decision.

An Order affirming the Order of the Discipline Committee against Bhanupriya Mahesh Khatri registered as Rakhee Khatri with respect to its monetary penalty dated May 6, 2022, and imposing a Fine of \$15,000.00 payable to RECO within 120 days of sending this Appeal Decision.

An Order affirming the Order of the Discipline Committee against Mahesh Omprakash Khatri registered as Mahesh Khatri with respect to its educational penalty, dated May 6, 2022 regarding successful completion of RECO MCE Compliance and Ethics in Real Estate, Parts 1 and 2, course, and provide RECO with confirmation of successful completion within 180 days of sending this Appeal Decision.

If necessary, because of the unavailability or limited availability of the above-mentioned courses which may prevent the Registrants from complying with this Order, the Registrants may apply to the Panel in a timely manner, while providing an explanation of the circumstances, and request an extension of the deadline to provide confirmation of successful completion of the courses.

**COSTS AND EXPENSES:**

The Registrar shall have seven (7) days from the date of the release of this Appeal Decision to advise the Manager, Discipline & Appeals Hearings at RECO (the "Manager"), whether the Registrar is seeking costs as a result of this Appeal on its merits, and/or costs reserved for the Fresh Evidence Motion.

If costs are being sought, the parties shall have fourteen (14) days from the date they advise the Manager of the Registrar's intention to seek costs, to attempt to reach agreement on the issue of costs and, if so, the Registrar shall advise the Manager accordingly.

If the parties are unable to agree on costs, the Registrar shall, within fourteen (14) days of time expiring to settle the costs, serve on the Registrants and file with the Manager, written Submissions on its purported entitlement to costs for the appeal and/or the Fresh Evidence Motion as well as the quantum of requested costs. Such Submissions shall not be greater than three pages in length, and shall include, on a fourth page, the quantum of costs sought and the breakdown of the work comprising the quantum so sought.

The Registrants shall, in turn, have seven (7) days from the date of service on the Registrants of the Registrar's Submissions on costs to serve Responding Submissions on the Registrar and to file such Submissions with the Manager. The Registrants' Submissions shall not be greater than three pages in length but may include, if the Registrants so wishes, a fourth page setting out the Registrar's quantum of costs and breakdown and any different (i.e. reduced) quantum that the Registrants submit should be awarded for the Registrar's costs.

## **WRITTEN REASONS:**

### **REASONS FOR DECISION**

#### **BACKGROUND**

1. This Appeal heard February 19, 2025 was brought by Mahesh Omprakash Khatri registered as Mahesh Khatri (herein "**Mahesh**") and Bhanupiya Khatri registered

as Rakhee Khatri (herein “**Rakhee**”) (collectively referred to as “**Registrants**”) to a Panel of the Appeals Committee (herein “**Appeal Panel**”) from a Decision (“the Decision”) of the Discipline Committee (herein “**Discipline Panel**”) dated May 6, 2022 under *Real Estate Business Broker Act, 2002* (“**REBBA**”)<sup>7</sup>. The Registrants waived their opportunity to have a Hearing before the Discipline Panel.

2. At the Appeal Hearing, Mahesh and Rakhee were represented by Daniel Litsos (“Mr. Litsos”) from Manis Law. The Real Estate Council of Ontario (herein “**RECO**”), specifically the Registrar (“**Registrar**”), was represented by Michael Collis (herein “**Mr. Collis**”).
3. In the Decision, the Discipline Panel found Rakhee and Mahesh had breached Sections 3, 4, 27, 37, 38 and 39 of the Code of Ethics under *REBBA* (herein the “**Code**”). The Discipline Panel ordered a Fine of \$20,000.00 against Mahesh and \$15,000.00 against Rakhee. Both Registrants were ordered to complete Part 1 and 2 of the Compliance and Ethics in Real Estate course provided by RECO.
4. The Discipline Panel adjudicated in writing by way of an Agreed Statement of Facts and Penalty dated December 23, 2021 (“**ASF**”) duly signed by both Registrants, along with an executed Waiver of Hearing also signed by both Registrants on December 23, 2021. The pertinent facts are set out in the ASF which is attached as **Schedule ‘A’** to this Appeal Decision, along with the Waiver of Hearing attached as **Schedule ‘B’**.
5. The Registrants, upon receiving the Decision, did not appeal within the thirty (30) day period, however, they did indicate their intention to appeal the Decision in that time frame.
6. On July 19, 2023, the Registrants brought a Motion to extend the time to appeal the Decision (herein “**Leave Motion**”). This Appeal Panel granted leave for the

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<sup>7</sup> REBBA has been replaced with the *Trust in Real Estate Services Act, 2002* (“**TRESA**”), which came into force on December 1, 2023.

Registrants to file their Appeal, with terms. Costs were not sought, nor reserved on that Motion.

7. On September 30, 2024, the Registrants brought a motion to the Appeal Panel seeking to introduce a transcript from a civil proceeding as fresh evidence at the Appeal (herein "**Fresh Evidence Motion**"). The Motion was denied on September 30, 2024. Costs of this motion were reserved for the Appeal Panel hearing this Appeal on its merits.

### **PRELIMINARY MATTERS**

8. Mr. Litsos for the Registrants and Mr. Collis for RECO, differed in their view of the proper materials permitted before the Appeal Panel.
9. They both agreed that the Decision, along with the ASF, and Waiver of Hearing were properly before the Appeal Panel.
10. Mr. Litsos submitted that the affidavit evidence filed by the Registrants in support of the Leave Motion and Fresh Evidence Motion ought to be admitted for consideration by the Appeal Panel. In his view, since such evidence was accepted for the purposes of those preliminary Motions, it should likewise be available to the Panel in adjudicating the Appeal on its merits.
11. Mr. Collis disagreed. He submitted that any evidence filed with respect to the Leave Motion and Fresh Evidence Motion is "fresh evidence" or "new evidence" (herein "**inadmissible materials**") and requires compliance with *Rule 18.01(10)* of the *Discipline and Appeals Committee Rules of Practice* (herein "**Rules**" or "**Rule**").
12. The Appeal Panel agrees with Mr. Collis and the reasons for this decision are set out below.

## **ISSUES ON APPEAL**

13. A review of the Submissions from the Registrants and RECO indicates the following issues for the Panel to decide, namely:

- A. What is the appropriate standard of review applicable to the Decision?
- B. What materials properly form part of the Record on Appeal?
- C. Based on the applicable standard of review, should the Decision be upheld or overturned?
- D. If the inadmissible materials were to be permitted by the Appeal Panel, does its admission alter the outcome of this Appeal?

### **ISSUE A: STANDARD OF REVIEW**

14. The standard of review on the Appeal is that of reasonableness.<sup>8</sup> It is noted by the Panel that at the hearing of this Appeal both counsels indicated that they agreed on this issue and there was no dispute that the correct standard of review was reasonableness.

15. The Supreme Court of Canada's decision in *Vavilov* has not changed the standard of review for appeals to a statutory tribunal.<sup>9</sup> The presumption remains reasonableness but can only be rebutted in two (2) types of circumstances, namely;

- a. the legislature expressly prescribes a different standard or provides a statutory right of appeal, signaling that appellate standards apply, or

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<sup>8</sup> *John Van Dyk and Real Estate Council of Ontario*, Reasons for Decision, Appeals Committee, March 26, 2014, at para. 18-20, Respondent's Book of Authorities ("RECO BOA"), Tab 3, at para. 69-71

<sup>9</sup> *Minister of Citizenship and Immigration v. Vavilov* 2019 SCC 65, para. [17](#) and [55](#)

- b. where the rule of law demands correctness, such as constitutional questions, general questions of central importance to the legal system or jurisdictional disputes.<sup>10</sup>

16. The Appeals Committee's decision in *Brian Gogek*<sup>11</sup>, which this Panel regards as persuasive authority, unequivocally affirms that the standard of reasonableness remains the applicable standard of review. The Committee expressly rejected the proposition that *Vavilov* altered this framework. This Appeal Panel concurs with that conclusion. The Appeals Committee decision in *Brian Gogek*<sup>12</sup>, which is persuasive on this Appeals Panel, has confirmed that the reasonableness standard is the correct standard and rejected the argument that the standard has changed as a result of the *Vavilov* case. The Appeal Panel agrees. Upon careful examination of the Trust in Real Estate Services Act ("*TRESA*") and its predecessor *REBBA*, it is evident that neither statute confers an explicit right of appeal by a registrant to a court or administrative tribunal. Moreover, the grounds advanced in the Registrants' Notice of Appeal do not engage issues of constitutional significance, matters of central importance to the legal system as a whole, or questions pertaining to the Tribunal's jurisdiction. Accordingly, the Appeal Panel finds that the appropriate standard of review applicable to this Appeal on its merits is that of reasonableness.

## **ISSUE B: MATERIALS PERMITTED BEFORE THE APPEAL PANEL**

17. The Discipline and Appeals Committees Rules of Practice apply to appeals to this Panel. Under *Rule 18.01(5)*, the Hearings Coordinator shall provide one copy of

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10 [\*Minister of Citizenship and Immigration v. Vavilov\*](#) 2019 SCC 65, para. [17](#)

11 *Brian Gogek and Real Estate Council of Ontario*, Reasons for Decision, Appeals Committee, July 28, 2021 at pp 8-13; RECO BOA, Tab 5 at pp 174-179.

12 *Brian Gogek and Real Estate Council of Ontario*, Reasons for Decision, Appeals Committee, July 28, 2021, at pp 8-13; RECO BOA, Tab 5 at pp 174-179.

the record. A footnote is provided clarifying the materials permitted on appeal, which states:

“Unless otherwise stated a “record” of a proceeding includes all exhibits, the transcript, if any, of any oral evidence and the decision and reasons for all Orders given.”<sup>13</sup>

18. The Registrants expressly waived their right to a Hearing; accordingly, no oral evidence was given in the proceeding and no transcript exists. The only materials properly before the Appeal Panel are therefore the Discipline Panel’s Decision, the ASF and the executed Waiver of Hearing.

### **ISSUE C: SHOULD THE DECISION BE UPHELD OR OVERTURNED?**

19. An appellate court (or administrative body) does not re-weigh evidence or substitute its own view under the standard of reasonableness. As the Supreme Court of Canada has stated:

“A decision will be unreasonable only if there is no line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived. If any of the reasons that are sufficient to support the conclusion are tenable in the sense that they can stand up to a somewhat probing examination, then the decision will not be unreasonable, and a reviewing court must not interfere. This means that a decision may satisfy the reasonableness standard if it is supported by a tenable explanation even if this explanation is not one that the reviewing court finds compelling.

This does not mean that every element of the reasoning given must independently pass a test for reasonableness. The question is rather whether the reasons, taken as a whole, are tenable as support for the decision. At all times, a court applying a standard of reasonableness must assess the basic adequacy of a reasoned decision, remembering that the issue under review

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13 See Rule 18.01(5) of the *Discipline and Appeals Committee Rules of Practise*

does not compel one specific result. Moreover, a reviewing court should not seize on one or more mistakes or elements of the decision which do not affect the decision as a whole.”<sup>14</sup>

20. The circumstances under which the Discipline Committee reached its Decision do not necessitate detailed reconsideration by this Appeal Panel. The primary evidence before the Discipline Committee consisted of the ASF, which are formal admissions by the Registrants. Furthermore, both Registrants executed a Waiver of Hearing, and these documents—bearing their signatures—were properly placed before the Discipline Panel.
21. The ASF, which included both the facts and proposed penalties, was not imposed but rather accepted by the Registrants as part of a consensual resolution. In particular, each Registrant initialled the relevant portion of the ASF confirming that they had read and understood the proposed penalty and expressly requested that the Discipline Committee proceed to make findings and impose penalties based on that agreed record. This reflects clear, informed, and voluntary consent to the disposition without a contested hearing.
22. On this record, there is no basis for the Appeal Panel to interfere with the Discipline Committee’s Decision which was reasonable. The Registrants’ acknowledgement and consent are unambiguous, and the Discipline Committee acted entirely within its statutory mandate in accepting the evidence before it and thereby rendering a decision. The Discipline Committee’s findings and penalties in the Decision were, in every respect, grounded in the evidence and process that the Registrants themselves endorsed.

#### **ISSUE D: INADMISSIBLE MATERIALS AND IMPACT ON APPEAL**

23. It is peculiar that the Registrants have chosen to make Submissions on this Appeal based on materials which they clearly knew, or ought to have known, were inadmissible in the context of this Appeal. Throughout Mr. Litsos’ argument on this

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14 [Law Society \(New Brunswick\) v. Ryan](#) (2003) S.C.J. No. 17, para. [55-56](#)

Appeal, he referred to evidence not before the Panel – the inadmissible materials- and he suggested that the Registrants signed the ASF and Waiver of Hearing under “fear and pressure”, concerned about a large retainer requested by their counsel. There was no evidence before the Appeal Panel in support of these Submissions. The Appeal Panel finds itself at odds with the procedural approach taken by the Registrants. To clarify, prior to this Appeal on its merits, the Registrants brought a motion to admit fresh evidence, the Fresh Evidence Motion, which was properly adjudicated on September 30, 2024, and denied by this Appeal Panel. In doing so, the Registrants rightly invoked Rule 18.01(11), which governs the admission of fresh evidence on appeal. This was appropriate, given the express prohibition under Rule 18.01(10) against the introduction of new evidence not before the Discipline Panel. The Fresh Evidence Motion brought by the Registrants sought only to introduce a transcript from a Court proceeding as new evidence. There was never a request made to admit the inadmissible materials or any other evidence on this Appeal.

24. It is therefore both surprising and procedurally improper that the Registrants subsequently relied on that same evidentiary record —submitted solely for the purpose of their Fresh Evidence Motion and Leave Motion — to advance arguments on the merits of the Appeal. While those materials were properly before the Panel for the limited purposes of preliminary Motions, they are not admissible in determining the substantive issues on appeal.

25. Put plainly, the Registrants have failed to comply with the procedural framework set out in *Rule 18*. Rather than bringing a formal Motion seeking to admit these materials for the Appeal on the merits, they appear to have disregarded the applicable rules altogether. On this basis alone, the admission of this inappropriate evidence before the Appeal Panel should be denied.

Had the Registrants brought a proper Motion under Rule 18.01(11) to admit the inadmissible materials for the purpose of the Appeal on the merits, the Panel would have been in a position to rule on its admissibility. However, no such Motion was brought. Even so, having reviewed the Submissions and the content of the

proposed evidence, it is doubtful that the Registrants would have met the threshold necessary to succeed on such a Motion. Rule 18.01(11) requires that fresh evidence must (i) be credible; (ii) if admitted it would probably have an important influence on the result and (iii) it could not have been obtained by reasonable diligence at the time of the original Hearing. The Motion was not brought so it is moot, but had it been brought it is the opinion of this Panel that this test would not have been met.

26. Based solely on the admissible record — namely, the ASF, the Waiver of Hearing, and the Decision of the Discipline Committee — the Appeal Panel finds no reviewable error. That alone is sufficient to dismiss this appeal. Even assuming, hypothetically, that the inadmissible evidence had been properly admitted, the Appeal Panel would still have found no basis to interfere with the Discipline Panel.

27. The rationale for this conclusion is straightforward: the additional evidence offered provides no meaningful support to the Registrants' position. First, there was no issue raised before the Discipline Panel regarding the validity of the ASF, as the Registrants consented to it knowingly and voluntarily. Second, they have not established any reasonable basis for setting the ASF aside, as it is in essence a consent order.

28. In *Law Society of Upper Canada v. Tollis*<sup>15</sup> the question of the appropriate test to set aside a signed Agreed Statement of Facts was at issue. The Law Society relied upon the principles enunciated in *R. v. M.A.W.*<sup>16</sup> which starts at paragraph 23:

[23] The judgement of Doherty J.A. in *R. v. T. (R.)* (1992), [1992 CanLII 2834 \(ON CA\)](#), 10 O.R. (3d) 514 (C.A.), is the principal decision of this court on what an appellant must show to set aside a guilty plea on the ground that it is invalid. A guilty plea is valid if it is voluntary, informed and unequivocal;

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15 [Law Society of Upper Canada v. Tollis](#) (2011) LSDD No. 236, 2011 ONLSAP 44, at [para. 19](#)

16 [R. v. M.A.W. 2008 ONCA 555](#) (CanLii)

conversely a plea that is either not voluntary, not informed, or not unequivocal is invalid and may be set aside on appeal. An appellant has the onus of showing invalidity on a balance of probability: see p. 519.<sup>17</sup>

29. In *Tollis*, the Law Society—functioning as a disciplinary body for lawyers, akin to the regulatory authority overseeing realtors in the present proceedings—has affirmed that, although discipline proceedings are not criminal in nature, there exists no principled or policy-based justification to distinguish them in this context. This is particularly so given the often complex, adversarial nature of such proceedings and the paramount public interest in ensuring their finality and safeguarding the integrity of the profession.<sup>18</sup>

30. By analogy, the Registrants consent to the ASF is akin to a guilty plea in a criminal proceeding. Where an accused enters a plea that is informed, voluntary, and unequivocal, a court may accept that plea as binding. Similarly, once those conditions are satisfied in the administrative context, the registrant is held to the agreement into which they knowingly entered.

31. In a prior decision of this Appeals Committee, which this Appeal Panel finds persuasive, Real Estate Council of Ontario v. Samuel Shing, Appeals Decision of January 22, 2015 (RECO Book of Authorities, page 282), the Appeals Committee dealt with an appeal from a Decision of the Discipline Committee that was made based on an executed Agreed Statement of Facts. The Appeals Panel in that case dismissed the Appeal noting that there was no fresh admissible evidence before it and it stated the following at page 10 of the decision:

“It is well recognized that Courts and Tribunals will uphold consents where parties act freely, and with an opportunity to ascertain relevant facts. In those cases, and so long as the consent is accepted by the trier of fact, in this case the

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17 [R. v. M.A.W. 2008 ONCA 555](#) (CanLii), para. [23](#)

18 [Law Society of Upper Canada v. Tollis](#) (2011) LSDD No. 236, 2011 ONLSAP 44, at [para. 21](#)

Lower Panel, the parties must abide by the adjudication to which they gave their consent.

There was no suggestion by the Appellant in the Appeal or in the submissions before this Panel that he was unable to ascertain relevant facts or made any error when he understood and accepted each and every term when read by the Lower Panel. The Appellant's primary submission in this Appeal is that he was not satisfied with the penalty that was imposed by the Lower Panel. We determine that the Appellant understood the nature and quality of the allegations read to him by the Lower Panel and that he understood and accepted each and every term of the Agreed Facts including admitting to the breaches of the Code of Ethics.

There was nothing in the Appeal to suggest that the Appellant was mistaken or misunderstood the consent that he gave. The submissions of the Appellant related to the consequences of the consent, not that he gave his consent. There was no suggestion of any misrepresentation by the Registrar or that the Appellant relied on any representation that might have been made with respect to the possible range of penalties that might have been imposed by the Lower Panel. “

32. In this case, as in *Shing*, the Registrants acted freely, had the opportunity to access the relevant facts and there was no error or misrepresentation. Even a review of the inadmissible materials — including the affidavits of Mahesh and Rakhee — reveals no suggestion that their consent to the ASF was anything other than voluntary and informed. There is no indication of coercion, misunderstanding, ineffective legal assistance, or procedural irregularity.

33. On the contrary, both individuals were represented by counsel prior to executing the ASF,<sup>19</sup> and it may be reasonably presumed that they were fully advised of its

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<sup>19</sup> See *Real Estate Council of Ontario v. Mahesh Khatri and Rakhee Khatri*, Appeal Committee of the Real Estate Council of Ontario dated July 19, 2023, Tab 8 of the RECO BOA, at page 2.

legal consequences. In short, the Registrants knew precisely what they were doing when they signed the ASF and waived their right to a Hearing.

34. For the same reasons articulated above concerning the setting aside of the ASF, even if the inadmissible materials were to be considered, the Appeal Panel finds it highly unlikely that any compelling argument could be made that the Registrants executed the ASF under duress arising from fear or undue pressure. The Panel notes that the test for economic duress is high and financial difficulty alone which is what has been suggested in this case is not sufficient (See for example, *Nicastro v. Tenaris Algoma Tubes Inc.* 2016 HRTD 1137).

### **DISPOSITION**

35. For the foregoing reasons, this Appeal Panel finds that this Appeal should be dismissed in its entirety.

36. The Appeal Panel makes the following Orders.

- a. The Discipline Committee's decision, dated May 6, 2022, is upheld and amended as to payment of the monetary penalty, costs and the date the Registrants have to complete educational courses.
- b. An Order affirming the Order of the Discipline Committee against Mahesh Omprakash Khatri registered as Mahesh Khatri with respect to its monetary penalty dated May 6, 2022, and imposing a Fine of \$20,000.00 payable to RECO within 120 days of sending this Appeal Decision.
- c. An Order affirming the Order of the Discipline Committee against Bhanupriya Mahesh Khatri registered as Rakhee Khatri with respect to its educational penalty, dated May 6, 2022 regarding successful completion of RECO MCE Compliance and Ethics in Real Estate, Parts 1 and 2, course, and provide RECO with confirmation of successful completion within 180 days of sending this Appeal Decision.

- d. An Order affirming the Order of the Discipline Committee against Bhanupriya Mahesh Khatri registered as Rakhee Khatri with respect to its monetary penalty dated May 6, 2022, and imposing a Fine of \$15,000.00 payable to RECO within 120 days of sending this Appeal Decision.
- e. An Order affirming the Order of the Discipline Committee against Mahesh Omprakash Khatri registered as Mahesh Khatri with respect to its educational penalty, dated May 6, 2022 regarding successful completion of RECO MCE Compliance and Ethics in Real Estate, Parts 1 and 2, course, and provide RECO with confirmation of successful completion within 180 days of sending this Appeal Decision.
- f. If necessary, because of the unavailability or limited availability of the above-mentioned courses which may prevent the Registrants from complying with this Order, the Registrants may apply to the Panel in a timely manner, while providing an explanation of the circumstances, and request an extension of the deadline to provide confirmation of successful completion of the courses.

### **COSTS AND EXPENSES**

37. This leaves the issue of costs of this Appeal on its merits, and the costs reserved from the Fresh Evidence Motion. The Appeal Panels orders that:

- a. The Registrar shall have seven (7) days from the date of the release of this decision to advise the Manager, Discipline & Appeals Hearings at RECO (the "Manager"), whether the Registrar is seeking costs as a result of this Appeal on its merits, and/or costs reserved for the Fresh Evidence Motion.

- b. If costs are being sought, the parties shall have fourteen (14) days from the date they advise the Manager of the Registrar's intention to seek costs, to attempt to reach agreement on the issue of costs and, if so, the Registrar shall advise the Manager accordingly.
  
- c. If the parties are unable to agree on costs, the Registrar shall, within fourteen (14) days of time expiring to settle the costs, serve on the Registrants and file with the Manager, written Submissions on its purported entitlement to costs for the Appeal and/or the Fresh Evidence Motion as well as the quantum of requested costs. Such Submissions shall not be greater than three pages in length, and shall include, on a fourth page, the quantum of costs sought and the breakdown of the work comprising the quantum so sought.
  
- d. The Registrants shall, in turn, have seven (7) days from the date of service on the Registrants of the Registrar's submissions on costs to serve responding Submissions on the Registrar and to file such Submissions with the Manager. The Registrants' Submissions shall not be greater than three pages in length but may include, if the Registrants so wishes, a fourth page setting out the Registrar's quantum of costs and breakdown and any different (i.e. reduced) quantum that the Registrants submits should be awarded for the Registrar's costs of this appeal.

Decision Released: May 30, 2025

**APPEALS COMMITTEE OF THE  
REAL ESTATE COUNCIL OF ONTARIO**

Karan Paul Singh Randhawa,     )  
Russell Pearsall, Karen Girling    )     **the 30th day of September 2024**  
  )

**B E T W E E N:**

**REAL ESTATE COUNCIL OF ONTARIO  
("RECO")**

- and –

**MAHESH OMPRAKASH KHATRI registered as MAHESH KHATRI**

-and-

**BHANUPIYA KHATRI registered as RAKHEE KHATRI**

**("Registrants")**

**MOTION DECISION**

This Motion was brought by Mahesh Omprakash Khatri registered as Mahesh Khatri ("**Mahesh**") and Bhanupiya Khatri registered as Rakhee Khatri ("**Rakhee**"), (collectively "**Registrants**") and heard by the Discipline Appeals Committee ("**Panel**") on July 25, 2024 via video conference. At the Motion, Mahesh and Rakhee were represented by Daniel Litsos ("**Mr. Litsos**") of Manis Law.

On behalf of the Real Estate Council of Ontario ("**RECO**"), specifically for the Registrar, Michael Collis ("**Mr. Collis**") acted as counsel on the Motion for RECO.

This Decision arises from a Motion by the Registrants for (a) an Order permitting the Registrants to file the transcript evidence of Individual A from his examination for discovery held on March 17, 2022 (herein the "**Individual A transcript**") and (b) an Order

from the Appeals Committee directing the Hearing Coordinator to process the Registrants' Factum and Book of Authorities to perfect the Registrants' appeal.

For the reasons outlined herein, the Panel has determined that the Registrants' Motion should be and is hereby dismissed, in part with Directions.

### **Brief Background to the Motion**

Sometime in 2019, Individual A and Individual B made a Complaint to RECO with respect to the conduct of the Registrants. RECO commenced these underlying proceedings by way of an Allegation Statement on or about October 6, 2020.

The Registrants entered into an Agreed Statement of Facts and Penalty (herein "**ASF**") on December 23, 2021 and executed a Waiver of Hearing pursuant to *Rule 4.02* of the *Rules of Practice (REBBA 2002)* (herein "**Rules**" or "**Rule**") on the same day.

The Discipline Decision was rendered by the Chair, Discipline Committee, Carole A. Murphy dated May 6, 2022, as RECO File No. 2019110409 (herein "**the initial Decision**"). The Decision was made on the basis of the ASF and Allegation Statement.

The Registrants initially failed to file their Notice of Appeal (herein "**NOA**") within the prescribed time to appeal. They brought a Motion to seek leave to extend the time to appeal, which was heard on April 28, 2023.

This Panel granted leave on July 19, 2023. The Registrants delivered their NOA on August 2, 2023. The Registrants did not deliver their Factum and Book of Authorities within the time prescribed by *Rule 18.01(8)*, being September 1, 2023.

The Registrants, as it appears on this Record, were of the view that the Individual A transcript, in a separate civil proceeding noted as Court file number # (herein "**Court Action**") should be part of the Record before the Panel for the Appeal on its merits.

The Registrants moved under *Rule 18.01(10)* seeking an Order from this Panel to permit the Individual A transcript to be filed on the Appeal as additional or fresh evidence. Of note, in the Motion Record filed by the Registrants, they do include other evidence and statements from Individual A, however, they do not seek leave to file this additional or fresh evidence in this Motion.

### **The Hearing of the Motion**

The Motion proceeded via electronic video conferencing on consent of all the parties. There had been no cross examinations on any Affidavits in support of or in response to the Motion. No reply materials were filed.

### **Submissions by Counsel for the Registrants**

Mr. Litsos submitted to the Panel that the Individual A transcript should be permitted for use on the Appeal on its merits and that the requirements of *Rule 18.01(11)* have been met. He addressed the three-part test which is specifically *set out in Rule 18.01(11)* in turn.

Mr. Litsos submitted that the Individual A transcript is credible. It was obtained during examination for discovery in the Court Action, wherein Individual A provided his evidence under oath. Individual A affirmed to tell the truth, the whole truth and nothing but the truth and the statements were transcribed by Victory Reporting Services Inc. in accordance with *Rule 34.08(1)* of the *Rule of Civil Procedure, R.R.O. 190, Reg. 194* (herein "**Civil Rules**"). The Individual A transcript and the facts Individual A provided to RECO, which formed the Allegation Statement and ASF, undermine his credibility. In other words, there is inconsistency in his statements which would undermine whether the facts in the ASF were true, thereby undermining the initial Decision.

Mr. Litsos further submitted that the Individual A transcript would have a significant bearing on the result of the Appeal on its merits. By permitting the use of the Individual A transcript at the Appeal, this additional or fresh evidence could affect the veracity of the ASF and ultimate findings of the initial Decision.

The Registrants particularized specific instances where the Individual A transcript was inconsistent with the Allegation Statement and/or the ASF. As such, the Individual A transcript would have a significant influence on the merits of the Appeal, especially since the Registrants did not cross-examine Individual A, which they could not do, as the examination for discovery took place **after** the ASF was entered into and the Allegation Statement issued, which leads to the third part of the test.

Mr. Litsos submitted the Individual A transcript could not have been obtained, even with reasonable diligence, as it was not available at the time of the initial Decision or when the Registrants executed the ASF. Individual A's examination for discovery took place on March 17, 2022, **after** the Allegation Statement was made on October 6, 2020, and **after** the ASF executed on December 23, 2021.

Given the Allegation Statement and ASF predate the Individual A examination for discovery, this would be in this instance fresh evidence or additional evidence that was not available at the time of the initial Decision, or at least prior to the ASF or Allegation Statement. Thus, the third part of the test is met.

Mr. Litsos also addressed the issue of the deemed undertaking rule found under *Civil Rule 30.1* in the *Civil Rules*. He relied on *Civil Rule 30.1.01(6)* which he argued permits the Individual A transcript to be used in the impeachment of Individual A's statements to RECO in the Allegation Statement and ASF.

### **Submissions by Counsel for the Registrar**

Mr. Collis for the Registrar submitted, contrary to the position of Mr. Litsos, that the Panel cannot and should not permit the Individual A transcript to be filed on the Appeal on the merits.

Mr. Collis submitted that the first part of the test is not met. In fact, a careful review of the Individual A transcript does not indicate whether Individual A was in fact inconsistent in his statements. The Individual A transcript is unclear as to where Individual A was in fact inconsistent, whether at the examination for discovery, or in his Complaint to RECO, or the ASF statements prior to the initial Decision. In other words, there is possible credible evidence of Individual A.

Mr. Collis further submitted that the second test could not be met. The additional or fresh evidence, even if the first part of the test is met could not be persuasive to a Panel hearing this Appeal on its merits. The fact is, the Registrants had the opportunity to test the credibility of Individual A by cross examining him at a Hearing. However, they dispensed this when they executed a Waiver of Hearing pursuant to *Rule 4.02*. The Individual A transcript would not assist on an Appeal, even if permitted.

Mr. Collis submitted that the third part of the test is not met. The Registrants' view of Individual A's testimony at the examination for discovery is simply their opinion of his credibility and lacks any air of truth or substantiveness. The Registrants could have tested the evidence of Individual A at a Hearing in these proceedings, but instead executed the ASF and waived their right to a Hearing.

With respect to the deemed undertaking issue, Mr. Collis submitted that *Civil Rule 30.1.01(6)* is not applicable in this case. Individual A transcript is not fresh evidence of what events took place that led to the Complaint to RECO, but simply evidence of Individual A's credibility and the only way such evidence could be used is if a Court allowed it to be used and even then, it could only be used to impeach Individual A.

Mr. Collis indicated that he took no position on the second ground of relief sought, the request for an Order from the Appeals Committee directing the Hearings Coordinator to process the Registrants' Factum and Book of Authorities to perfect the Registrants' appeal. He did submit that the Individual A transcript is not a transcript within the meaning of Rule 18.01(7)

### **Reply Submissions by Counsel for the Registrants**

In Reply Submissions, Mr. Litsos, in essence reiterated the same position, disagreeing with the positions take by Mr. Collis.

### **The issues to be determined on this Motion**

1. Should the Panel grant the Registrants an Order permitting the use of the Individual A transcript for the Appeal on its merits?
2. If the Panel grants the Order for the use of the Individual A transcript for the Appeal on its merits, does the Deemed Undertaking Rule apply in these circumstances?
3. Should the Panel grant an Order directing the Hearings Coordinator to process the Registrants' Factum and Book of Authorities to perfect the Registrants' Appeal?

### **Findings of the Panel arising from the Motion**

#### **Issue No.1: Individual A Transcript and use on the Appeal**

The test for permitting additional or fresh evidence on appeal is found at *18.01(11)* of the *Rules*, which states:

The Appeals Committee shall not grant an Order permitting additional or fresh evidence unless the additional or fresh evidence:

- a) Is apparently credible;
- b) If admitted, it would probably have an important influence on the result; and
- c) It could not have been obtained by reasonable diligence at the time of the original Hearing.

Based on the language of this rule and the use of the word “and”, in order for additional or fresh evidence to be admitted, all three factors need to be met.

The underlying principle, which is not specifically included in the *Rules* but is included in Court decisions is that the additional or fresh evidence, if believed, when taken with other evidence at a trial is expected to have affected the result.<sup>20</sup> In other words, does the additional or fresh evidence tip the scales in favour of the Appellant?

For the reasons that follow, the Panel finds the test for permitting additional or fresh evidence has not been met.

### **Part One: Apparent Credible Evidence**

The Panel concludes that the criteria for the first component of the test have not been established. The Panel appreciates the Individual A transcript as being a statement by him under oath after the Allegation Statement and ASF, but the totality of the evidence must be considered. As stated by the Supreme Court of Canada in [Bent v. Platnick 2020 SCC 23, at para. 66](#),

“...the proposition that, on a motion to adduce fresh evidence, an assessment of credibility is to be carried out against the whole background of the case and is not restricted to the motion itself; in other words, evidence may be credible in the sense that it is reasonably capable of belief when viewed in the context of other evidence relevant to that issue.”

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<sup>20</sup> [Bent v. Platnick 2020 SCC23, at para. 50](#)

As Mr. Collis succinctly identified, the material inconsistencies between Individual A's statement between the RECO investigation and Court Action are unclear, vague and would not assist this Appeal Panel. This Panel is not making a determination of the credibility of Individual A, nor should it, however, in the context, against the whole background, the Panel cannot say for the purpose of the test that the evidence put forward in the Individual A Transcript is apparently credible.

The Panel simply finds that the evidence is not relevant to the Appeal on its merits. The Record on an Appeal includes all exhibits, the transcript, if any, of any oral evidence and the decision and reasons for all Orders given.<sup>21</sup> Evidence of Individual A at the examination for discovery, post-dates the Allegation Statement and ASF and simply does not assist in the Appeal.

The opportunity to address the credibility of Individual A should properly take place at a Hearing, not as additional or fresh evidence at an Appeal.

The assertion that the Allegation Statement was utilized in the preparation of the ASF is entirely unsupported by any evidence within this Record. What remains unequivocal is that the Registrants reviewed the ASF, duly executed it on December 23, 2021, and subsequently submitted it to RECO in conjunction with their Waiver of a Hearing. In essence, by executing the ASF, the Registrants affirmed the veracity of the allegations put forth by Individual A, thereby negating the necessity of a Hearing or the opportunity to cross-examine him. Furthermore, the Individual A transcript offers no substantive assistance to the Registrants on an Appeal.

## **Part Two: Important Influence on the Result**

The Panel concludes that the criteria for the second component of the test have not been satisfied. The Panel is not persuaded the Individual A transcript would assist the Registrants.

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<sup>21</sup> See *Rule 18.01(5)*, reference 17

Upon examination of the Record, it is clear that the Registrants indeed signed the ASF. Although they claim to have done so under 'pressure and fear,' they nevertheless concede to having signed the document. The Panel observes that no substantive explanation has been provided for the alleged 'pressure' or 'fear,' and these assertions do not, in the Panel's view, constitute viable grounds to contest the legitimacy of the signed ASF.

Moreover, the evidence tendered by the Registrants does not address the reasoning behind their decision to sign the ASF—an explanation that the Panel would consider both relevant and potentially impactful on the merits of the Appeal. The absence of such evidence further weakens the Registrants' position, as it fails to engage with the critical issues at hand.

More disconcerting is the Registrants' decision to waive the Hearing, forfeiting the critical opportunity to rigorously cross-examine Individual A's evidence. An Appeal Panel is not the proper forum for evaluating credibility or rendering such determinations. This responsibility is entrusted to the Panel in the initial proceedings, and that Panel's findings are typically granted deference on appeal, except under exceptional circumstances.

The Registrants, in essence, appear to be requesting that the Panel, within the scope of this Motion, undertake an assessment of Individual A's credibility and, to a certain extent, conclude that the ASF, which they have acknowledged executing, lacks evidentiary weight. In other words, the Registrants seek an adverse determination regarding Individual A's credibility and a subsequent linkage of that determination to the ASF. The Panel disagrees.

There is a clear disconnect between the Individual A transcript which post-dates the time when the Registrants executed the ASF and waived their opportunity to a Hearing. The Panel does not view the Individual A transcript as having any bearing on the Appeal on its merits.

The Panel further rejects any submissions on the basis of findings of fraud against the Registrants as an influence under the Appeal. The initial Decision made a finding of breach of *section 38* of the *Real Estate Code of Ethics O. Reg. 580/05*, due to the Registrants failure to use best efforts to prevent error, misrepresentation, fraud or any unethical practise in respect of a trade in real estate. In the view of the Panel, it is inappropriate to suggest this as a finding of fraud.

### **Part Three: Could not have been Obtained by Reasonable Diligence at the Time of the Original Hearing**

The Panel concludes that the criteria for the third component of the test have not been satisfied. As the Courts have held, “the due diligence criterion is not a rigid one and has been held to be a practical concept that is context sensitive.”<sup>22</sup>

The Panel acknowledges that the additional or fresh evidence was technically unavailable to the Registrants at the time of the initial Decision; however, RECO points out, the opportunity to address credibility concerns was foreclosed by the Registrants’ waiver of a Hearing.

The Registrants failed to meet this factor as well.

### **Issue No.2: Deemed Undertaking Rule**

Both parties raised the issue of the deemed undertaking rule found in the *Civil Rules* s.30.1, which in essence provides that all parties and their respective lawyers are deemed to undertake not to use the evidence or information obtained in a particular proceeding

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<sup>22</sup> <sup>22</sup> [Bent v. Platnick 2020 SCC23, at para. 60](#)

for any purpose other than those of the proceedings in which the evidence was obtained.<sup>23</sup> There are exceptions, but in limited circumstances.

On the face of it, the Registrants would be in breach of the deemed undertaking rule for seeking to submit the Individual A transcript as part of their Appeal on its merits in this discipline proceeding. The Registrants submit *Civil Rule 30.1.01(6)* is an exception that applies in these circumstances. That *Civil Rule* states:

(6) Subrule (3) does not prohibit the use of evidence obtained in one proceeding, or information obtained from such evidence, to **impeach** the testimony of a witness in another proceeding.

This exception has no application. This rule is specifically permitted for use of evidence in impeachment of a witness while they are testifying. In these circumstances, Individual A did not testify, nor was he cross examined due to the Registrant's Waiver of a Hearing.

Of paramount concern, albeit briefly addressed by the parties, is the conspicuous absence of any evidence presented by the Registrants demonstrating that they have secured leave for the use of the Individual A transcript from the Court Action. Absent such authorization, the transcripts remain inadmissible, a restriction that applies both at the initial Decision and throughout this proceeding.

In order for the Registrants to use the Individual A transcripts, they would need to satisfy the Court in the Court Action that it is in the superior public interest to permit use of these transcripts in these discipline proceedings.<sup>24</sup> The Courts have established the following factors in determining whether to permit a party leave to use evidence or information in another proceedings, as follows:

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<sup>23</sup> *Civil Rules 30.1.01(3)*

<sup>24</sup> [Kelkas v. Killcaslan 2020 O.N.S.C. 3596 \(CanLii\), para. 37](#)

- a) Whether the parties in the proceeding are the same or similar, and whether the issues and factual background are the same,
- b) Whether the material is inherently confidential,
- c) How the party intends to use the information in litigation, and
- d) The availability of alternative means to obtain the information.<sup>25</sup>

The Panel does not purport to determine whether the Court would grant leave for the use of the transcripts in these proceedings. However, it appears that the Registrants bear a substantial burden in securing such permission.

The Panel notes the absence of any evidence within the Registrant's Motion Record indicating that leave for the use of the Individual A transcripts has been obtained. Consequently, even if the Registrant were to satisfy the Panel that the criteria under *Rule* 18.01(11) have been met, the transcripts would remain inadmissible unless leave is duly granted by the Court.

### **Issue No.3: Extension for Time to File Factum and Book of Authorities**

The Rules require the party commencing an Appeal to file its Factum and Book of Authorities within thirty (30) days of delivering its Notice of Appeal.<sup>26</sup> The Registrants filed their NOA on August 2, 2023. On the evidence in the Motion Record, it appears the Registrants did not file its materials within the thirty (30) day timeline.

The Panel recognizes this Motion was required by the Registrants, to seek an Order to include the Individual A transcript as part of the Record for the Appeal on its merits, pursuant to *Rule 18.01(10)*. Although unsuccessful on that part of this Motion, it is reasonable in the circumstances to permit the Registrants additional time to deliver their Factum and Book of Authorities particularly since the Prosecution has indicated that it takes no position on that request for relief. As such, further time is granted as set out in

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<sup>25</sup> [Kelkas v. Killcaslan 2020 O.N.S.C. 3596 \(CanLii\), para. 38](#)

<sup>26</sup> *Rule 18.01(7)*

the procedural directions set out below, but the Appeal on its merits shall be pre-emptory to all parties.

The underlying Decision in these Appeal proceedings was delivered on May 6, 2022. The motion to obtain leave to extend the time to file the Registrant's NOA was heard on April 28, 2023 and the Decision rendered July 19, 2023. This Motion was heard by video conference on July 25, 2024. Given the number of Motions and extensive time the parties and the Panel have spent with respect to this Appeal, the Hearing on its merits should proceed pre-emptory to all parties.

### **Procedural Directions of the Panel**

Given that the Panel is granting the Registrants' Motion in part and in order to move this proceeding forward, the Panel makes the following directions:

1. The Registrants shall deliver their Factum and Book of Authorities within thirty (30) days of the release of this Decision and pay any applicable filings fees forthwith.
2. The Individual A transcript referred to in this Decision shall not be included in the Record.
3. RECO shall deliver its Factum and Book of Authorities within thirty (30) days of receipt of the Registrant's Factum and Book of Authorities.
4. Upon RECO delivering their Factum and Book of Authorities, the parties shall within thirty (30) days schedule a Hearing date through the Manager, Discipline

and Appeals Hearings for the Appeal on its merits. The date for the Appeal shall be pre-emptory to all parties.

5. Any other procedural issues that parties wish to raise should be raised prior to the Appeal date being scheduled and at the earliest possible opportunity with the Manager, Discipline and Appeals Hearings, who will in turn contact the Panel for further direction.
6. Costs of this motion shall be reserved for the Panel hearing the Appeal on its merits.

Released September 30, 2024

**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 -**

**MAHESH OMPRAKASH KHATRI registered as MAHESH KHATRI**

**- AND -**

**BHANUPRIYA KHATRI registered as RAKHEE KHATRI**

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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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**BHANUPRIYA KHATRI registered as RAKHEE KHATRI**

**FINDINGS:** In violation of Sections 3, 4, 37, 38 and 39 of the *REBBA 2002* Code of Ethics.

**ORDER:** Fine of \$ 15,000.00 payable to RECO on or before December 23, 2022.

Successful completion of RECO MCE Compliance and Ethics in Real Estate, Parts 1 and 2, course, and provide RECO with confirmation of successful completion on or before December 23, 2022.

**WRITTEN REASONS:**

*/ Continued on next page*

## **MAHESH OMPRAKASH KHATRI registered as MAHESH KHATRI**

**FINDINGS:** In violation of Sections 3, 4, 27, 37, 38 and 39 of the *REBBA 2002* Code of Ethics.

**ORDER:** Fine of \$ 20,000.00 payable to RECO on or before December 23, 2022.

Successful completion of RECO MCE Compliance and Ethics in Real Estate, Parts 1 and 2, course, and provide RECO with confirmation of successful completion on or before December 23, 2022.

**WRITTEN REASONS:** *attached*

### **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. Bhanupriya Khatri, registered as Rakhee Khatri ("Rakhee"), is registered as a salesperson under the *Real Estate and Business Brokers Act, 2002* ("Act"). Rakhee is employed at Brokerage A. Between April 18, 2017 and May 24, 2017, Rakhee was employed at Brokerage B.
2. Mahesh Omprakash Khatri, registered as Mahesh Khatri ("Mahesh"), is registered as a broker under the *Real Estate and Business Brokers Act, 2002* ("Act"). Mahesh is and was at the material time employed at Brokerage A.
3. Mahesh and Rakhee, although spouses, at the relevant times, worked at the two different brokerages.

4. Seller A and Seller B (the "Sellers") were the owners of the property known municipally as 1-A Street, City A (the "Property") and Rakhee acted as their salesperson.
5. On or about April 28, 2017, Brokerage B listed the Property, on behalf of the Sellers, for \$849,000.00, with Rakhee acting as listing agent representative.
6. On May 3, 2017, Buyer A and Buyer B (the "Complainants") signed a Buyer Representation Agreement with Sapphire, with Mahesh acting as their agent representative, for the specified purpose of purchasing the Property.
7. On the same date, the Complainants entered into an Agreement of Purchase and Sale with the Sellers for \$865,000.00 (the "APS").
8. The APS was conditional on mortgage financing and inspection, with those conditions expiring May 10, 2017. As the Khatris were leaving town, on May 4, a waiver was signed and dated May 9, the day before the condition was to be waived. The waiver was not released and the conditions were not waived prior to expiry.
9. Both the Seller and the Complainants were advised that the deal would come to an end but could be resuscitated upon the return of the Khatris and both parties agreed.
10. On or about May 16, 2017, after discussion about the home inspection, the Complainants, and the Sellers, rather than creating a new agreement, signed an Amendment to the original APS, which was backdated to May 9, 2017, changing the condition expiry day to May 18, 2017.
11. The Inspection condition was then waived as the Sellers had promised to provide the Complainants with \$5,000.00 to address the concerns that arose from the home inspection.
12. On May 16, 2017, the Complainants and the Sellers agreed to increase the sale price on the face of the APS by \$20,000.00 to \$885,000.00 to help secure additional financing for the Complainants so that they could renovate the basement of the Property.
13. It was agreed and understood that Mahesh would pay the Complainants the said \$20,000.00 as a Buyer rebate after completion of the sale.
14. Further, on May 16, 2017, the financing condition was waived. Mahesh took no steps to confirm that the Complainants had financing in place.
15. The Complainants attempted to renegotiate the sale price and when refused then did not close on the Property.
16. The Sellers subsequently sold the Property on November 13, 2017, for \$700,000.00.
17. The Sellers have sued the Complainants for their losses and Rakhee and Mahesh are parties to that civil proceeding.

#### SUMMARY OF AGREEMENTS

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

- A. Rakhee failed to fully counsel the Sellers with respect to the inflation of the sale price of the property, contrary to sections 3, 4, 38 and 39 of the Code of Ethics.
- B. Rakhee abdicated her responsibilities under the listing agreement and failed to actively represent the best interests of the Sellers contrary to sections 3, 4 and 37 of the Code of Ethics

**It is agreed that RAKHEE 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.

Best interests

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

Inaccurate representations

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

(2) A registrant shall not knowingly make an inaccurate representation about services provided by the registrant.

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.

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

- C. Mahesh failed to fully counsel the Complainants with respect to the inflation of the sale price of the property contrary to sections 3, 27, 38 and 39 of the Code of Ethics.
- D. After the Sellers and Complainants reached agreement to increase the sale price and Mahesh agreed to pay the Complainants the referenced \$20,000.00 as a Buyer rebate after closing Mahesh failed to formalize that agreement in writing contrary to sections 3 and 27 of the Code of Ethics

- E. After the Sellers agreed to pay the Complainants \$5,000.00 to address issues that arose from the home inspection Mahesh failed to formalize that agreement in writing contrary to sections 3 and 27 of the Code of Ethics.

**It is agreed that MAHESH 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.

Best interests

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

Written and legible agreements

27. (1) A registrant who represents a client in respect of a trade in real estate shall use the registrant's best efforts to ensure that,

(a) any agreement that deals with the conveyance of an interest in real estate is in writing; and

(b) any written agreement that deals with the conveyance of an interest in real estate is legible.

(2) Subsection (1) applies, with necessary modifications, if a brokerage and a customer have an agreement that provides for the brokerage to provide services to the customer in respect of any agreement that deals with the conveyance of an interest in real estate.

Inaccurate representations

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

(2) A registrant shall not knowingly make an inaccurate representation about services provided by the registrant

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

BHANUPRIYA MAHESH KHATRI (registered as RAKHEE KHATRI), the Respondent, be ordered to pay a penalty of \$15,000.00 on or before December 23, 2022.

In addition to the above fine, the Respondent, BHANUPRIYA MAHESH KHATRI (registered as RAKHEE KHATRI), must enrol in both RECO MCE Compliance and Ethics in Real Estate, Parts 1 and 2, courses, and provide proof of successful completion of the courses on or before December 23, 2022.

By initials below, I, BHANUPRIYA MAHESH KHATRI (registered as RAKHEE KHATRI), 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, BHANUPRIYA MAHESH KHATRI (registered as RAKHEE KHATRI), 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, BHANUPRIYA MAHESH KHATRI (registered as RAKHEE KHATRI), 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.]

## AGREED PENALTY

MAHESH OMPRAKASH KHATRI (registered as MAHESH KHATRI), the Respondent, be ordered to pay a penalty of \$20,000.00 on or before December 23, 2022.

In addition to the above fine, the Respondent, MAHESH OMPRAKASH KHATRI (registered as MAHESH KHATRI), must enrol in both RECO MCE Compliance and Ethics in Real Estate, Parts 1 and 2, courses, and provide proof of successful completion of the courses on or before December 23, 2022.

By initials below, I, MAHESH OMPRAKASH KHATRI (registered as MAHESH KHATRI), 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, MAHESH OMPRAKASH KHATRI (registered as MAHESH KHATRI), 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, MAHESH OMPRAKASH KHATRI (registered as MAHESH KHATRI), 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:**

**BHANUPRIYA MAHESH KHATRI (registered as RAKHEE KHATRI)**

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee (*REBBA 2002*) concluded that the Respondent breached Sections 3, 4, 37, 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. BHANUPRIYA MAHESH KHATRI (registered as RAKHEE KHATRI) is Ordered a Fine of \$15,000.00 payable to RECO on or before December 23, 2022.
2. BHANUPRIYA MAHESH KHATRI (registered as RAKHEE KHATRI) is Ordered to successfully complete RECO MCE Compliance and Ethics in Real Estate, Parts 1 and 2, courses, on or before December 23, 2022.

**DECISION OF THE CHAIR:**

**MAHESH OMPRAKASH KHATRI (registered as MAHESH KHATRI)**

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee (*REBBA 2002*) concluded that the Respondent breached Sections 3, 4, 27, 37, 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. MAHESH OMPRAKASH KHATRI (registered as MAHESH KHATRI) is Ordered a Fine of \$20,000.00 payable to RECO on or before December 23, 2022.
2. MAHESH OMPRAKASH KHATRI (registered as MAHESH KHATRI) is Ordered to successfully complete RECO MCE Compliance and Ethics in Real Estate, Parts 1 and 2, courses, on or before December 23, 2022.

*[Released: May 6, 2022 ]*