

**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 -

LI LIU (registered as AMY LIU)

DISCIPLINE DECISION AND REASONS FOR DECISION

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

FINDINGS: In violation of Sections 3, 4, 5, 17, 37(1), 38 and 39 of the *REBBA 2002* Code of Ethics.

ORDER: Fine of \$ 8,000.00 payable to RECO on or before September 15, 2023.

Successful completion of RECO MCE Compliance and Ethics in Real Estate, Parts 1 and 2 courses, and provide RECO with confirmation of successful completion on or before September 15, 2023.

WRITTEN REASONS:

REASONS FOR DECISION

INTRODUCTION

This matter proceeded on the basis of an Agreed Statement of Facts and Penalty and Waiver of Hearing, pursuant to Rule 4.02 of the Rules of Practice (*REBBA 2002*).

The Agreed Statement of Facts and Penalty read:

AGREED STATEMENT OF FACTS AND PENALTY

It is agreed as follows:

1. Li Liu, registered as Amy Liu, ("Liu") is registered as a salesperson under the *Real Estate and Business Brokers Act, 2002* ("Act"). Liu is employed at Brokerage A.
2. Representative A is registered as a salesperson under the *Real Estate and Business Brokers Act, 2002* ("Act"). Representative A is also employed at Brokerage A.
3. Seller A ("Seller") was the owner of the property at 1 A Street, City A ("Property"). The Seller was represented by Representative A and Liu, on behalf of Brokerage A under the terms of a seller representation agreement ("Listing Agreement") signed on July 16, 2019.
4. Buyers A were buyers under a Buyer Customer Service Agreement with Brokerage A, represented by Representative A and Liu.
5. Representative B ("Complainant") is a real estate broker employed at the brokerage Brokerage B.
6. Representative C is a real estate salesperson employed at Brokerage C.
7. Representative D is a real estate salesperson who, at all material times, was employed at the brokerage Brokerage D.
8. Representative E is a real estate salesperson employed at the Brokerage E.
9. Representative E is a real estate broker employed at Brokerage F.
10. On or about July 16, 2019, the Seller entered into an MLS[®] Listing Agreement ("Listing") with Brokerage A, represented by Representative A and Liu. The Listing offered the Property for sale for \$799,000.00 from July 16, 2019 to December 31, 2019, with a holdover of 90 days. The total commission rate was 3.25%, of which 2.25% was to be paid to a buyer's brokerage, if any.

11. Representative A and Liu also prepared an MLS® Data Information Form for the Property, which the Seller signed on July 16, 2019. The “Remarks for Brokerages” section indicated that offers were welcome any time by email as long as they contained a 24-hour irrevocable period, the prescribed Schedule “B” and a Form 801.
12. Representative A posted the Listing on the City A Real Estate Board MLS® site on or about August 4, 2019, at approximately 8:30 a.m. (“MLS® Listing”).
13. On or about August 4, 2019, at approximately 1:28 p.m., Representative A edited the “remarks for brokers” section of the MLS® Listing to state, among other things, that:

“Seller Will Review Offers On Aug 14th At 7 Pm. Pls Register Offer Before 5 Pm Thr Office. [sic]” (“Offer Date”), with the provision that “Seller Reserves Right To Receive The Pre-Emptive Offer [sic]”.
14. On or about August 6, 2019, the Complainant contacted Representative A by telephone to express his interest in the Property. The same day, the Complainant submitted an offer (“First Offer”) to purchase the Property for \$940,000.00, with a deposit of \$45,000.00. The First Offer was conditional on financing until 5:00 p.m. on August 14 – the same date and time that offers were to be registered prior to the presentation time of 7:00 p.m.
15. The Seller signed back the offer at a purchase price of \$952,388.00 and amended the deposit terms from “Upon acceptance (Next business day)” to “Upon acceptance”. The irrevocability and closing dates were also changed by the Seller. The Complainant accepted the First Offer, with the Seller’s modifications, including a purchase price of \$952,388.00, at approximately 10:15 p.m., on August 6, 2019.
16. The next day, August 7, 2019, the Complainant had a conversation with his mortgage broker, at which time he became aware that he may not have been eligible for mortgage financing given the difference between the list price and the amount of the First Offer. The Complainant texted Representative A to say that he was unable to secure financing and wished to withdraw his offer. The Complainant did not provide a deposit upon the acceptance of the First Offer.

17. The Complainant consulted his mortgage broker, who was able to secure pre-approved financing for the Complainant, contingent on a lower offer price.
18. On or about August 8, 2019, the Complainant submitted a new offer (“Second Offer”) for \$920,000.00, with a \$45,000.00 deposit payable upon acceptance. The Second Offer was irrevocable until 1:00 p.m. on August 9, 2019 and was conditional on approval of financing.
19. On or about August 12, 2019, Representative A updated the MLS® Listing to state:

“Seller Reserves Right To Accept Pre-Emptive Offer Without Notice”.
20. The Complainant did not hear back from Representative A. He called her on the morning of August 12, 2019 and was told by Representative A that his offer was not accepted. The Complainant offered to deliver his deposit cheque, but Representative A instructed him not to do so.
21. On or about August 12, 2019, the Complainant submitted a new offer to buy the property (“Third Offer”) for \$900,000.00, again with a deposit of \$45,000.00 due upon acceptance. The Third Offer was irrevocable until 11:59 p.m. on August 12, 2019 and was unconditional.
22. Representative A texted the Complainant shortly after he had submitted the Third Offer to advise him that the Seller was not accepting any offers until the Offer Date. A few hours later Liu called the Complainant to tell him that the Property had been sold. The successful offer – from Buyers A under a Buyer Customer Service Agreement with Brokerage A - was unconditional, for a purchase price of \$931,800.00. The Buyers A offer’s acceptance was confirmed at approximately 10:58 p.m. on August 11, 2019.
23. Representative E showed the Property to some buyers on or about August 6, 2019. Representative E was not informed of the offer from Representative A and Liu’s own buyers or that the Seller was considering an offer in advance of the offer date of August 14, 2019.

24. Representative E submitted an offer for the Property on behalf of his buyers on August 13, 2019. He was not informed of the offer from Representative A and Liu's own buyers, or that the Seller was considering an offer in advance of the offer date of August 14, 2019.
25. Representative D booked a showing of the Property on August 8 or 9, 2019. He was not advised of the offer from Representative A and Liu's own buyers, or that the Seller was considering an offer in advance of the offer date of August 14, 2019.
26. Representative C showed the Property to some buyers. She was also not advised of the early offer from Representative A and Liu's own buyers, or that the Seller was considering an offer in advance of the offer date of August 14, 2019.

SUMMARY OF AGREEMENTS

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

- A. Liu failed to promote and protect her seller clients' best interests and failed to treat all potential buyers fairly and honestly when she failed to advise the Complainant and other buyers who had expressed interest in the Property that her own buyers had submitted an offer for the Property in advance of the August 14, 2019 offer date, contrary to sections 3, 4 and 38 and 39 of the Code of Ethics.
- B. Liu failed to inform the Complainant and other potential buyers in writing that her brokerage was providing customer service to a buyer who submitted an offer for the Property, contrary to section 17 of the Code of Ethics.
- C. Liu failed to ensure that the written direction from the Seller to entertain offers earlier than August 14, 2019 was accurately posted in the MLS® Listing before the Property was sold and failed to update the MLS® Listing to reflect the fact that an offer was being entertained on August 11, 2014, contrary to sections 3, 4, 5, 37(1), 38 and 39 of the Code of Ethics.

It is agreed that Liu 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 client.

Conscientious and competent service, etc.

5. A registrant shall provide conscientious service to the registrant's clients and customers and shall demonstrate reasonable knowledge, skill, judgment and competence in providing those services.

Nature of relationships

17. If a registrant represents or provides services to more than one buyer or seller in respect of the same trade in real estate, the registrant shall, in writing, at the earliest practicable opportunity and before any offer is made, inform all buyers and sellers involved in that trade of the nature of the registrant's relationship to each buyer and seller.

Inaccurate representations

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

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

LI LIU (registered as AMY LIU), the Respondent, be ordered to pay a penalty of \$8,000.00 on or before September 15, 2023.

In addition to the above fine, Respondent must enrol in the 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 September 15, 2023.

By initials below, I, LI LIU (registered as AMY LIU), 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, LI LIU (registered as AMY LIU), 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, LI LIU (registered as AMY LIU), acknowledge that I was aware of my right to be represented by Counsel or agent in this matter.

[Respondent's Initials]

By signature below, the Parties agree, acknowledge, understand and consent to the final settlement of this matter by way of this Agreed Statement of Facts and Penalty.

[The Agreed Statement was duly signed by the Parties.]

DECISION OF THE CHAIR

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee (*REBBA 2002*) concluded that the Respondent breached Sections 3, 4, 5, 17, 37(1), 38 and 39 of the *REBBA 2002* Code of Ethics. The Chair of the Discipline Committee (*REBBA 2002*) is also in agreement with the joint submission of the Parties as to penalty and accordingly makes the following order:

1. LI LIU (registered as AMY LIU) is Ordered a Fine of \$8,000.00 payable to RECO on or before September 15, 2023.
2. LI LIU (registered as AMY LIU) is Ordered to successfully complete RECO MCE Compliance and Ethics in Real Estate, Parts 1 and 2 courses, on or before September 15, 2023.

[Released: June 16, 2022]