



Pursuing trust in every transaction

**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 -

NATHALIE TOUSSAINT

DISCIPLINE DECISION AND REASONS FOR DECISION

ORDER: Fine of \$25,000.00 to be payable to RECO within one (1) year from the date of this Decision; and

Successful completion of the Real Estate Institute of Canada "REIC 2600: Ethics and Business Practice" course and provide RECO with confirmation of successful completion within 180 of sending this decision.

COSTS AND EXPENSES: No cost awarded

WRITTEN REASONS: *attached*

REASONS FOR DECISION

PENALTY & COST

INTRODUCTION

The Panel met by videoconference on June 6, 2025, to review the Submissions of the parties, on the issues of Penalty and Costs. Written Submissions were received from counsel for RECO and counsel for Nathalie Toussaint (“Toussaint” and/or the “Respondent” and/or “the Registrant”) and included:

SUBMISSIONS ON PENALTY BY RECO:

RECO relied upon the guiding factors established in *Registrar v. Suzette Thompson, Appeals Committee of RECO, May 31, 2012, (the “Thompson factors”)* to illustrate RECO’s rationale for the penalty it was seeking. The guiding factors are as follows:

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

In applying the Thompson factors to the facts of this case, RECO argued the nature and gravity of the breaches of the Code of Ethics to be "...towards the serious end of the spectrum." RECO asserted that "Toussaint's breaches relate to consumer protection and ensuring fairness and transparency in real estate transactions". RECO also submitted that "The breaches also go to ensuring that the information that a registrant communicates to consumers is accurate, and not misunderstood, as consumers would and should be able to rely on the information provided by a registrant in relation to a real estate transaction."

Regarding the role of the Registrant in the breaches RECO submitted that Toussaint was the sole cause of the breaches.

With respect to whether the Registrant suffered or gained as a result of the breaches, RECO stated that Toussaint did not benefit from the breaches as the real estate transaction failed to close.

Responding to the impact of the breaches on Toussaint's client ("the Complainant"), RECO suggested that the Complainant suffered significant financial harm due to Toussaint's conduct. It was with the guidance and advice of Toussaint that the Complainant prepared and submitted directly to the Landlord, a deposit cheque totalling \$71,479.98 to be deposited directly into the Landlord's private account, despite the Offer to Lease clearly having stipulated at paragraph 5 that the deposit was to be delivered by cheque payable to **Brokerage A**. This was all done prior to the Offer to Lease being signed by the Landlord.

With respect to the need for specific deterrence, RECO argued that the penalty must be more than "the cost of doing business" and that "It must be made clear to Toussaint that consumers and other registrants rely upon her to provide conscientious service and to demonstrate reasonable knowledge, skill, judgement and competence in providing her services".

Regarding the need for general deterrence, RECO contended that the penalty imposed is "...communication to the profession about a) what conduct is inappropriate, and b)

the severity of different types of breaches of the Code of Ethics”. RECO also submitted that “...a significant message, in the form of an appropriate penalty, needs to be sent to the industry of the importance of engaging with a client of a brokerage and the handling of deposits”.

Regarding the need to maintain the public’s confidence in the profession, RECO submitted that a primary consideration in imposing a penalty for unprofessional conduct is the collective reputation of the profession and the need to ensure that the public can have confidence when engaging a real estate professional that they will be treated fairly, conscientiously, and in accordance with the Rules.

RECO re-iterated its position that it considers Toussaint’s actions “...falls towards the end of being most serious” regarding the degree to which the breaches are outside the range of acceptable conduct.

In terms of the range of sanctions for similar cases RECO relied upon the following RECO Decisions to support the penalty RECO is seeking:

- *RECO and Mary Letitia Hamilton*, Discipline Decision, May 2, 2022
- *RECO and Mukul Desai*, Discipline Decision, January 24, 2023
- *RECO and Jamie Peter Macdonald*, Discipline Decision, May 19, 2022
- *RECO and Michael James Poetker*, Discipline Decision, March 25, 2025

RECO seeks an Order that Toussaint pay a fine of \$25,000.00, and, that Toussaint successfully complete the REIC 2600 – Ethics and Business Practice Course offered by the Real Estate Institute of Canada.

SUBMISSIONS BY THE RESPONDENT TOUSSAINT:

Counsel for Toussaint’s Submissions acknowledged and referred to the Thompson factors.

In relation to the Thompson factors Toussaint contended:

With respect to the nature and gravity of the breaches, Toussaint's counsel wrote "Nathalie acknowledges that as a result of her lapse in judgement, her client's interests were jeopardized. However, Nathalie's actions do not fall towards the serious end of the spectrum."

Regarding the role of Toussaint in the breaches, Toussaint's counsel suggested that her conduct was neither active nor deliberate.

Toussaint's Counsel concurred with RECO's submission that Toussaint neither suffered nor gained as a result of the breaches.

Regarding the impact of the breaches on the Complainant, Toussaint's Counsel asserted, "It is regrettable that the complainant's deposit is being held by the landlord. However, the landlord's failure/refusal to return the deposit is outside of Nathalie's control and that the complainant is not prejudiced from pursuing legal means to retrieve her deposit".

In terms of the requirement for specific deterrence, Toussaint's Counsel argued that the completion of the REIC 2600 Ethics and Business Practices course should serve as sufficient deterrence for Toussaint. However, in responding to the need for general deterrence, Toussaint's Counsel proposed conflicting positions in stating, "Nathalie respectfully submits that the completion of the REIC 2600 along with a reasonable fine, on the lower end of the penalty scale will act as a general deterrence" and then stating "Nathalie will remediate her conduct by undertaking to complete the REIC 2600 course and this will act as a general deterrence".

In addressing the need to maintain the public's confidence, Toussaint's Counsel wrote: "Nathalie respectfully submits that the public's confidence in the profession can only be maintained and remedied through means of education so that this type of conduct is not repeated."

Toussaint's Counsel did not specifically address the factor that deals with the degree to which the breaches are regarded as being outside the range of acceptable conduct,

however, in addressing the range of sanctions in similar cases Toussaint's Counsel contrasted the cases relied upon by RECO distinguishing them as not applicable. Toussaint's Counsel relied upon one Decision, a disciplinary case involving the College of Nurses of Ontario to support Toussaint's position on penalty:

- *College of Nurses of Ontario v. Paul Gesembe*, 2014 CanLii 82276

Toussaint submitted that a penalty of not more than \$7,500.00 and the completion of the REIC course 2600 would serve as a sufficient penalty.

PANEL'S DECISION ON PENALTY:

The Submissions from the Parties, along with the Decision and Reasons for the Decision were reviewed and considered by the Panel in order to arrive at the Decision on Penalty. In making its Decision, the Panel considered the Thompson factors.

Nature and Gravity of the breaches of the Code of Ethics:

Although Toussaint asserted that she has been registered to trade in real estate for seven years and that she is experienced in commercial real estate leasing transactions, Toussaint clearly failed to protect and promote her client's best interests with respect to a critical component of the transaction, specifically the deposit.

Toussaint clearly did not understand how to calculate the deposit and failed to understand the risk of instructing her client to pay the deposit amount directly to the Landlord even before the acceptance of the Offer to Lease. Essentially, Toussaint lacked reasonable knowledge, skill, judgement and competence and failed to provide her client with conscientious service.

Additionally, this was not her first transaction and Toussaint should have been aware, without excuse, that she should not have communicated and negotiated directly with the Landlord who was under a representation agreement with another brokerage.

Toussaint suggested in her Submissions that her conduct was “neither active nor deliberate”. That is untrue. She engaged in actions which breached the Code of Ethics and caused her client damage. She dealt directly with the Landlord despite there being a representation agreement; she provided the deposit amount to her client; she told her client to pay the deposit directly to the landlord. The Panel views Toussaint’s breaches of the Code of Ethics as very serious.

The role of the offending member in the breaches:

The Panel finds that Toussaint was the central figure and the sole person that caused the breaches of the Code of Ethics. The evidence was clear and unmistakable that by Toussaint’s actions alone, she communicated and negotiated directly with the Landlord and advised and instructed her client regarding the deposit.

Whether the offending member suffered or gained because of the breaches:

The parties both agreed on this factor in their submissions, and the Panel accepts their Submissions and does not find that Toussaint either suffered or gained because of her breaches of the Code of Ethics.

The impact of the breaches upon the Complainant and others:

Toussaint’s breaches of the Code of Ethic’s extend beyond impacting just the Complainant. The impact of the breaches extends to the industry and to the public as well. Toussaint’s client, the Complainant, suffered a severe and substantial financial loss because of Toussaint’s actions. She is out of pocket a substantial sum. The suggestion made by Toussaint that the Complainant could sue for a return of the deposit is not an appropriate submission on penalty.

The Complainant should not be in this position and is only out of pocket and potentially facing more expenditures in recovery attempts due to the conduct of Toussaint. The real estate industry is compromised by Toussaint's disregard of a brokerage representation agreement with a client and by Toussaint's inappropriate advice to the Complainant regarding the deposit. The public at large is left to question, the integrity of our industry and whether they will be provided with competent service when dealing with members of our industry.

The need for there to be specific deterrence to protect the public:

For reasons already stated, it is the Panel's opinion that there is definitely a strong need for specific deterrence in this case to protect the public and that the deterrent must be significant enough for Toussaint to understand the gravity of and the impact of her breaches of the Code of Ethics.

With this factor, the Panel gives great consideration as to whether or not Toussaint readily accepted responsibility for her breaches of the Code of Ethics. Toussaint did not accept responsibility for the breaches before or during the Disciplinary Hearing and only did so in the Penalty Submissions phase, well after the Panel had rendered its Decision and Reasons on Findings.

The need for there to be a general deterrence to protect the public:

The Panel finds that the penalty imposed upon Toussaint must send a very clear and strong message to fellow registrants that the conduct in this case is highly unacceptable. The amount of the penalty must be sufficient to quash any consideration in the industry of a penalty "as a cost of doing business" and the penalty must be significant enough to deter other registrants from engaging in the same or similar conduct.

The need to maintain the public's confidence in the integrity of the profession:

The Panel considers the need to maintain the public's confidence in the integrity of the profession is critically important and the penalty imposed for violations of the Code of Ethics must serve to restore the public's confidence. The penalty is an unmistakable message that the Panel takes these breaches very seriously.

Toussaint's actions convey a tainted perception to the public of a lack of integrity on the part of real estate professionals when dealing with colleagues and a failure to abide by the real estate profession's primary directive to promote and protect the best interests of our clients.

The degree to which the breaches are regarded as being outside the range of acceptable conduct:

The Panel views the breaches as totally outside the range of acceptable conduct.

The range of sanctions in similar cases:

In determining the penalty, the Panel reviewed the cases provided by the parties. The Panel found that all of the cases submitted dealt with singular code violations. The cases offered by RECO particularly dealt with representation issues.

This case is extraordinarily different as it deals with multiple breaches of the Code of Ethics and goes beyond just an issue of representation, extending into the very important issue of protecting a client deposit.

It is also noted that though the Panel considered all of the cases presented, most of the cases submitted by RECO proceeded by way of Agreed Statement of Facts and Penalty

and the only case submitted by Toussaint is not a real estate profession case and dealt with suspension which is something not within the jurisdiction of this Panel in this case.

PENALTY

The Panel is mindful that *Real Estate and Business Brokers Act, 2002* (REBBA 2002) and associated regulations are designed to protect the integrity of real estate transactions in Ontario and as such weighs in on protecting the public, clients, buyers and sellers and registrants alike.

The Panel has considered all the material with which it has been presented and has unanimously concluded that the following penalties are appropriate in this case:

- i. Nathalie Toussaint is ordered to pay a fine of \$25,000.00 to be payable within one (1) year from the date of this Decision; and
- ii. Nathalie Toussaint is ordered to successfully complete the REIC 2600 Ethics and Business Practices within 180 days from the date of this Decision.

Neither party made a request for costs and therefore there is no award of costs made.

[Released: July 11, 2025]

**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 -

NATHALIE TOUSSAINT

DISCIPLINE DECISION AND REASONS FOR DECISION

APPEARANCES:

For the Registrant:

Unrepresented

For the Real Estate Council of Ontario: Dipak Parmar, counsel

Heard in Toronto on:

December 2, 2024

FINDINGS:

In violation of Sections 3, 4, 5, 7, 29, 38 and 39 of the Code of Ethics.

ORDER:

Counsel for the Registrar, *REBBA 2002* to deliver written submissions to the Panel and to the Respondent on the issue of penalty and costs within 15 days of the date on which the Panel's decision and reasons are delivered.

The Respondent shall deliver to the Panel and to Counsel for the Registrar, *REBBA 2002* its written submissions on penalty and costs in response to Counsel for the Registrar, *REBBA 2002*'s submissions within 15 days of the date on which Counsel for the Registrar, *REBBA 2002*'s submissions on penalty and costs are delivered to the Respondent.

Counsel for the Registrar, *REBBA 2002* shall deliver to the Panel and to the Respondent its reply to the written submission on penalty and costs of the Respondent within 5 days of the date on which the Respondent's submissions on penalty and costs are delivered to Counsel for the Registrar, *REBBA 2002*.

Any inquiries relating to the delivery of the above-mentioned documents should be directed to the Hearings Coordinator.

COSTS AND EXPENSES: If appropriate, submissions to be made on costs and expenses with submissions on penalty.

WRITTEN REASONS:

REASONS FOR DECISION

INTRODUCTION

This Hearing took place on December 2, 2024, in the presence of the Respondent, Nathalie Toussaint (the “Respondent” and/or “Toussaint”) and Dipak Parmar, paralegal for the Real Estate Council of Ontario. The Panel was comprised of Filippo Sbrocchi, Larence Ratchford and Harold Arkin. Nicolette Holovaci was present as independent legal counsel to the Discipline Panel.

ALLEGATIONS BY THE REGISTRAR, REBBA 2002

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

- A. As the buyer’s representative, Toussaint dealt directly with the Landlord when Toussaint knew or ought to have known, that the Landlord was a client of landlord’s brokerage, contrary to sections 3, 7, 38 and 39 of the Code of Ethics.

- B. Toussaint failed to properly advise or protect the interests of the Tenant by instructing the Tenant to make a deposit into the Landlord’s private account, instead of paying it to the listing brokerage, before the Tenant’s offer was even accepted by the Landlord, contrary to sections 4, 5, 29, 38 and 39 of the Code of

Ethics.

- C. Toussaint failed to properly advise the Tenant on the correct draft deposit amount, contrary to sections 5, 29, 38 and 39 of the Code of Ethics.

The Registrar, *REBBA 2002* alleged that Toussaint breached 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.

Dealings with other registrants

7. (1) A registrant who knows or ought to know that a person is a client of another registrant shall communicate information to the person for the purpose of a trade in real estate only through the other registrant, unless the other registrant has consented in writing. O. Reg. 580/05, s. 7 (1).

(2) If a broker or salesperson knows or ought to know that a buyer or seller is a party to an agreement in connection with a trade in real estate with a brokerage other than the brokerage that employs the broker or salesperson, the broker or salesperson shall not induce the buyer or seller to break the agreement. O. Reg. 580/05, s. 7 (2).

Delivery of deposits and documents

29. Except as otherwise provided by law, if a registrant is representing a client or providing services to a customer in connection with a trade in real estate, and the client or customer has entered into an agreement in connection with the trade that requires the registrant to deliver a deposit or documents, the registrant shall deliver the deposit or documents in accordance with the agreement.

Error, misrepresentation, fraud, etc.

38. A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in real estate.

Unprofessional conduct, etc.

39. A registrant shall not, in the course of trading in real estate, engage in any act or omission that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming a registrant.

EVIDENCE OF THE PARTIES (EXHIBITS):

1. Allegation Statement dated Nov. 23, 2023

2. Notice of Hearing dated Oct. 21, 2024
3. RECO Book of Documents dated Dec. 19, 2023
4. Toussaint Email – Nov. 20, 2024, at 9:38 am
5. Toussaint Email – Nov. 20, 2024, at 9:46 am
6. Toussaint Email – Nov. 20, 2024, at 9:51 am
7. Toussaint Book of Document dated Nov. 22, 2024
8. Toussaint video – viewing 365 King Street West (“the Property”)

WITNESSES FOR THE REGISTRAR, REBBA 2002

1. Witness A
2. Witness B
3. Witness C

WITNESSES FOR THE RESPONDENT

1. Nathalie Toussaint

OPENING STATEMENTS:

PROSECUTION’S OPENING STATEMENT:

The Prosecutor commenced by stating the case before the Panel is a simple matter. The Prosecutor added that he intended to present evidence during the Hearing that would prove the Registrar’s case by showing that the Respondent, even though acting for the Tenant and knowing that the Landlord was represented by a different brokerage, negotiated directly with the Landlord. The Prosecutor further stated that the evidence he would present would also show that the Respondent miscalculated the deposit and instructed the Tenant to provide the deposit directly to the Landlord and not the listing brokerage.

REGISTRANTS OPENING STATEMENT:

The Registrant stated that it was her hope that by the end of the Hearing she would have demonstrated to the Panel that she “did not make this transaction as Registrant and that she was only helping Witness A. Additionally, she stated she would demonstrate that the Landlord’s agent was present and that she did not deal directly with the Landlord. She further stated that Witness A made a decision to deal directly with the Landlord as the Landlord was trying to rent the location by its own effort. She said that she believed she acted professionally but was “cut out of the transaction” by the Landlord and the Tenant.

WITNESSES FOR THE REGISTRAR:

Direct Testimony – Witness A

In her testimony, Witness A testified she was an entrepreneur who owned a restaurant but was currently working odd jobs.

In her testimony, Witness A recalled the events of October 20th, 2022. She said on that date the Respondent, Toussaint, called her in the morning to let Witness A know that she found a unit of interest for rent that was located in downtown Toronto, the Property. Witness A said she was picked up by Toussaint and driven to the Property. Upon arrival, Toussaint made a call to the listing agent and then they proceeded inside the Property to meet with the Landlord representative, Representative A. The Property was used as a restaurant. Witness A expressed she liked the unit.

Witness A was asked by the Prosecutor to review identification documents, being Driver’s Licences found on Page 216 & Page 217 of RECO’s Book of Documents (Exhibit 3). Witness A was asked to identify the individuals. Witness A was unable to identify the individual on page 216 but was able to confirm the individual on Page 217 as the Landlord representative, Representative A, who she testified was the person present when she and Toussaint met at the showing of the Property on October 20, 2022.

When asked by the Prosecutor to confirm who was present at the showing of the Property on October 20, 2022, Witness A testified it was herself, the Landlord representative,

Representative A, and Toussaint. She further stated they were taken to the basement where she met a younger fellow, who was identified as having the same name as the Landlord representative, Representative 1. When asked if that individual was either of the persons from page 216 or 217 of RECO's Book of Documents (Exhibit 3), Witness A responded that he was not.

When asked by the Prosecutor what was discussed at the showing, Witness A testified that Representative A, the Landlord representative, said to Toussaint that she should deal with him directly and that the listing agent was a friend who was only helping him out. Witness A testified she indicated to Toussaint that she did not want to deal directly with Representative A, the Landlord representative, to which Toussaint responded it would be ok to do so. After leaving the Property, during the drive home, Toussaint indicated to Witness A that she was going to draft an Offer to Lease.

Witness A was directed to the terms of the Offer to Lease which is found from Pages 26 to 32 of RECO's Book of Documents (Exhibit 3). Witness A confirmed the following terms of the document: she identified her company as the Tenant, and Representative A company as the Landlord, the Agreement date of October 21, 2022, the deposit in the amount of \$54,537.64 payable to the listing Brokerage A, an additional \$30,000 security deposit required for use of the existing liquor license, and the Offer to Lease was irrevocable until 11:59 p.m. on October 21, 2022.

When the Prosecutor asked Witness A to identify the document on Page 296 of RECO's Book of Documents (Exhibit 3), Witness A testified it was a copy of the bank draft from her payable directly to the Landlord which was in accordance with instructions provided to her by Toussaint. Witness A confirmed the amount of the draft was for \$71,479.98

When asked by the Prosecutor to explain the content of Page 512 to page 517 of RECO's Book of Documents (Exhibit 3), Baiye testified it was series of text messages exchanged between herself and Toussaint regarding the changing deposit amount.

When asked by the Prosecutor to explain the content of page 515 of RECO's Book of Documents (Exhibit 3), Witness A testified it was a text message from Toussaint to her relaying information that the Landlord had sent to Toussaint regarding the terms he was seeking.

In addition, Witness A testified that following receipt of this message Witness A went to the bank to obtain a bank draft for the deposit as she was instructed by Toussaint to do it before 11:00 am that day or else "it would not be in effect anymore". Witness A went on to say that enroute to her bank on October 21, 2022, she received a text from Toussaint stating the deposit was wrong and that it should be for \$71,479.98. Witness A called Toussaint and expressed that this "was a lot" and "I don't have that kind of money". Witness A said that Toussaint responded she is a professional and that Witness A should do as she is told.

Witness A was asked by the Prosecutor to explain to the Panel the varied deposit amounts from the first amount of \$54,537.64 set out in the Offer to Lease (at page 26 of Exhibit 3) to \$69,376.04 (set out in a text at page 514 of Exhibit 3) and finally to \$71,479.98 as indicated in the text message exchange between herself and Toussaint (set out at page 516 of Exhibit 3). Witness A testified that Toussaint was confused and not sure how much the deposit amount should be.

When asked by the Prosecutor to explain what she did with the deposit bank draft, Witness A testified she went downtown to drop it off and was instructed by Toussaint that if Representative A, the Landlord representative was not there Witness A was to go to the basement and drop it off. When asked by the Prosecutor if Witness A had any conversations with Representative A, the Landlord representative about the lease, Witness A responded that Representative A, the Landlord representative only told her that he would be preparing the Lease. When asked by the Prosecutor if Witness A

ever spoke with the listing representative regarding the Offer to Lease, Witness A testified that she had not.

Witness A testified further that after she dropped off the deposit she went home and contacted Toussaint to let her know that Representative A, the Landlord representative would be sending her the Lease Agreement on the upcoming Monday. Witness A testified as she was waiting on Monday to receive the Lease Toussaint called Witness A and instructed her to go to the bank to cancel the deposit cheque. Witness A testified she did not know if the Landlord ever signed the Offer to Lease.

When asked by the Prosecutor if deposit funds were ever returned to Witness A, she responded by saying “No Sir”. Witness A testified that when she went to the bank to ask them to reverse the bank draft, she was told it could not be done.

When asked by the Prosecutor if there was anything Witness A wanted to say to the Panel, she stated that this single act has put her family in a very difficult place. She was left alone and Toussaint stopped communicating with her. She could not run her business, pay her mortgage or her bills due to this single act. She said she wants justice.

Cross Examination of Witness A:

In her cross-examination, Witness A testified that she has “done a couple” of real estate transactions and knew how real estate transactions worked. Witness A confirmed that Toussaint helped her find her most recent rental unit and Witness A was looking for a new location because her business was growing and the location, she was in was being sold. Witness A was asked to recall a meeting with her former landlord regarding her rental arrears to which Witness A testified she could not remember the amount and that she stopped paying in rent because that landlord was not co-operating with the sale of Witness A business.

During her testimony Witness A stated that she was shown the listing for the Property on the morning of October 20, 2022, and she does not recall receiving a copy of the listing before that. When asked to confirm who was present at the showing and if she recalled the listing agent being there, Witness A responded that the person in the basement was a gentleman with same name as the Landlord representative and they did not meet anyone else at the showing.

When asked if she knew he was the listing agent, Witness A testified that he was not the listing agent. Witness A also stated that the money for the deposit came from her bank account. When asked about a text exchange with the Landlord representative (Exhibit 7, page 33), Witness A testified that it was not her telephone number and that it was the telephone number for her daughter and the only reason for the communication was the Landlord representative was asking which email the floorplans for the Property should be sent to. She said that Toussaint was made aware of this exchange.

No Re-Examination

No Panel Questions

Direct Testimony – Witness B:

Witness B testified he is a real estate broker and manager at Brokerage A and has been a broker since 2007. He further testified that he and Representative B, who was the nephew of Representative A the Landlord representative, were the listing agents for the Property. Witness A testified that an Offer to Lease was made directly to the Landlord representative by Toussaint without the involvement of the listing brokerage.

For clarification, Witness B testified that three individuals share the same name. The senior Representative A is the Property owner and Landlord representative. The other person named Representative B is the nephew of the Landlord representative and was also one of the listing sales representatives for the Property. The third individual named

Representative C is the son of the above referenced nephew of the Landlord representative.

Witness B testified that he has known the three individuals for about 18 years and he was asked to list the Property with the condition that the nephew of the Landlord representative be added on as an additional listing sales representative.

When asked by the Prosecutor to review Page 258 of RECO's Book of Documents (Exhibit 3), Witness B confirmed it as a copy of the MLS Listing for the Property which contained the contact information for the listing sales representatives and showing instructions which stated, "Contact Listing Agent For Showings".

When asked by the Prosecutor to identify the content of Page 193 of RECO's Book of Documents (Exhibit 3), Witness B testified it was a showing confirmation for Toussaint to show the Property from 12:00 p.m. to 1:00 p.m. on October 20, 2022. After being asked to review Page 192 of RECO's Book of Documents (Exhibit 3), Witness B testified it was email communication between himself and Toussaint on October 20, 2022 wherein Toussaint expressed her client's interest in the Property and requested information on the deposit amount, to which Witness B responded by email with the answer.

When asked by the Prosecutor to explain the content of Page 203 of RECO's Book of Documents (Exhibit 3), Witness B testified that it was email communication between the Landlord representative and Toussaint, wherein Toussaint is negotiating directly with the Landlord representative regarding the Property.

When asked by the Prosecutor to explain the content of Page 196 of RECO's Book of Documents (Exhibit 3), Witness B testified it contains an email exchange from Toussaint to him requesting his help in getting the deposit returned to her client.

Cross Examination of Novak:

In response to the questioning from the Respondent Witness B stated that he was aware the Landlord had its own For Lease sign on the Property, that it contained the Landlord representative's personal number, and that the Landlord wanted to keep the sign up as the Landlord was trying to rent the Property on its own prior to listing it.

Witness B testified that the Landlord representative had also told Witness B that if the Landlord received any calls as a result of the signs, the Landlord would direct the calls to the listing sales representatives. Witness B expressed his displeasure with the sign however he said that the Landlord insisted it remain.

When asked by the Respondent if Witness B knew who Toussaint met with at the showing on October 20 2022, and, if Witness B knew that Toussaint met the Landlord representative's nephew Representative B, the listing sales representative, Witness B testified that he did not know. He went on to testify that he asked the Landlord representative's nephew, Representative B, who was also one of the listing sales representatives, "multiple times since then" if he was present at the showing to which Representative B, the Landlord representative's nephew responded that he does not know who Toussaint is.

When asked how long the nephew was licensed and why the licence lapsed, Witness B testified he was licensed for "a long time" but he could not verify for how long. Witness B went on to testify that the nephew was basically in the business strictly for personal transactions.

Panel Questioning of Witness B:

During questioning from the Panel, Witness B confirmed that the Landlord's nephew Representative B, the listing sales representative, was licensed and registered with Brokerage A while he was on the MLS listing for the Property and that there were no issues raised from other parties related to the Landlord's own signage at the relevant time.

Re- Examination of Witness B:

When asked by the Respondent why Witness B did not have the Landlord's sign removed by forcing the Landlord to remove it, or refusing to take the listing, Witness B testified that he asked the Landlord to remove the sign, the Landlord refused, and that the Landlord was entitled to do as pleased as he owned the Property. Witness B also testified that it is commonplace with commercial lease situations for landlords to have their own signage.

Request by the Respondent to submit additional evidence – Email and Video:

Just before the Prosecution introduced its third witness, the Respondent requested the Panel permit her to introduce additional evidence being an email and a short video clip. The Prosecution did not object to the introduction of the evidence and the Panel ruled to allow it. It became apparent that that the email sought to be tendered was already tendered and marked as Exhibit 4. The video clip of the Property was entered as Exhibit 8.

Direct Examination -Witness C:

The Prosecution's third witness testified he has been a Compliance Officer with RECO for the past 11 months and his responsibility is to investigate complaints received against real estate agents in Ontario. He went on to review the procedures followed to investigate complaints. He testified that Compliance A was the Compliance Officer who was assigned to investigate this matter, but she was away on personal matters, and he was standing in her place to provide testimony on behalf of RECO.

Witness C testified that he is familiar with the Complaint. He stated that when the file was re- assigned to him, he reviewed all the information to become familiar with the details. He stated that the Registrar did not pursue an investigation of the Landlord

representative's nephew, Representative B, who was also one of the listing representatives of the Property, but did decide to pursue the Complaint against Toussaint.

When asked by the Prosecution to explain the content of Page 188 of RECO's Book of Documents (Exhibit 3), Witness C testified it was a copy of the letter the Landlord representative's nephew, Representative B, who was also one of the listing sales representatives of the Property, sent to RECO in response to the Complaint. Witness C read into the record some of the content from the letter which included:

"Regarding the complaint, at no point in time have I had any communications with Witness A. I have never met her, emailed her, texted her or spoken with her. In addition, I have never had any communication or interaction with her real estate sales representative Nathalie Toussaint. I don't know who either of these people are."

When asked to explain the content of Page 304 of RECO's Book of Documents (Exhibit 3), Witness C testified it was an email from the Landlord Representative B to RECO's Compliance Officer, Compliance A in response to Compliance A' request for information. Witness C read into the record the following from the email:

"The proposed tenant's salesperson contacted me directly. Thereafter she and I discussed the terms of the lease and agreed upon those terms by way of email exchange. The proposal tenant's(sic) Real Estate Agent then delivered the deposit directly to me payable to my corporation in the amount of \$71,476.98..."

On being asked to review and read the content of page 19 of RECO's Book of Documents (Exhibit 3), Witness C read into the record the following from the email which was from Toussaint to the Landlord Representative B:

"I made a terrible mistake by allowing my client to write the draft to your company and she is Being (sic) penalize (sic) by this situation"

Witness C further testified that the Registrar pursued the Complaint against Toussaint for dealing directly with the Landlord, for her inability to calculate the correct deposit, and for failing to protect her client by having her client pay the deposit directly to the Landlord.

Cross Examination of Witness C:

In cross-examination, Witness C testified that he was not aware of any documents that showed either Baiye or her daughter dealing directly with the Landlord but he would “have to look”. He stated that there was no further investigation beyond the response RECO received from the Landlord representative’s nephew Representative B, who was also one of the listing sales representatives.

In responding to a question regarding disclosure requirements Witness C testified there is no requirement to include with the MLS Listing that the sales representative might have been related to the Landlord.

No Re-Examination

Panel Questions of Witness C:

In answer to questions from the Panel Witness C testified that he did not know the exact date Representative B, who was also one of the listing sales representatives of the Property, lost his registration, however, he believed it was because he decided not to renew his registration. Weibe also testified that he was not aware of any conflicting information regarding Representative B, the listing agent’s, written response to RECO at page 188 of Exhibit 3 which said that he has never met or communicated with Toussaint.

Witness for the Respondent -Toussaint:

Toussaint served as her only witness. Toussaint’s testimony included:

Toussaint said she sought the advice of her broker regarding the calculation of the deposit before she put the Offer to Lease together and that she found the calculation to be

confusing. She asked Witness A if she was ok with the amount of the deposit and Witness A said she was fine with it. Toussaint referred to the video marked as Exhibit 8 which she said was recorded during the viewing of the Property. She said that at the time of the recording, Witness A indicated that she wanted to place the offer on the Property “now”.

Toussaint testified she felt she “was doing things the right way” until Witness A started to negotiate with the Landlord directly. At that point she claims she backed off. She admitted she instructed Witness A to drop off the deposit cheque to the Landlord. She does not know why Witness A cancelled the deal. She is unsure when the Landlord may have exchanged phone numbers with Witness A. She feels she is being taken “for a fall” and that Witness A knew exactly what was going on.

Toussaint went on to say there are a lot of questions that she cannot answer. She concluded by saying she believes she acted professionally, the transaction happened within 2 days and she feels a lot of information was exchanged without her knowledge.

Cross Examination of Toussaint:

In cross-examination Toussaint testified she has been working as a realtor for 7 years and during the time of the matters at issue in this proceeding she was registered with Brokerage B. She testified that she specializes in commercial real estate. Toussaint confirmed she was representing Witness A in the search for a commercial property. Regarding the MLS listing of the Property, Toussaint confirmed she was aware of the following information contained in the broker remarks on the MLS listing: (i) to contact the listing agent for showings, (ii) the name of the listing brokerage, (iii) the names of the listing sales representatives and (iv) their respective contact numbers.

Toussaint further confirmed she wrote an email to Witness B requesting a showing of the Property and information about the deposit. She confirmed Witness B provided her information on calculation for the deposit. When Toussaint was asked to confirm the

identity of the Landlord Representative B from his driver's license, she claimed she never met him and that he "looks really old and does not remember him being that old".

Toussaint went on to testify that the person identified on Page 217 of RECO's Book of Documents, Exhibit 3, (the Landlord representative's nephew Representative B, who was also one of the listing sales representatives of the Property) was who she met at the showing. When the Prosecutor suggested to Toussaint that she had met the Landlord representative, Representative A and not the Landlord representative's nephew Representative B, who was also one of the listing sales representatives of the Property, Toussaint disagreed.

Toussaint testified that she was provided with an email address to send the Offer to Lease to and she believed it belonged to the Landlord representative's nephew, Representative B, the other listing representative for the Property. She testified that she soon learned that it belonged to the Landlord representative, Representative A. She confirmed she continued to communicate the terms of the Lease directly with the Landlord representative at that point and that Witness A wanted her to deal with the Landlord directly. Toussaint stated she was only acting to help Witness A. She confirmed she understood the Landlord was the client of another brokerage. In her testimony, Toussaint admitted that she copied and pasted the Landlord's deposit figure and sent it in a message to Witness A.

Toussaint did not feel that it raised any "red flags". When asked why she didn't she terminate her Buyer Representation Agreement with Witness A if she disagreed with Witness A actions, Toussaint responded that they were family friends. She admitted that she should have cancelled it when she learned Witness A wanted to deal directly with the Landlord and she stated, "That's on me".

When asked if she ever contacted Witness C during the negotiations, Toussaint replied that it was Witness A who was in full communication with the Landlord and Toussaint

“jumped in as a friend”. When the Prosecutor questioned Toussaint’s statement in an email where she wrote “I made a terrible mistake” (Exhibit 3, page 19) he asked her if she admitted making a mistake to which Toussaint responded “yes”.

Re- examination - Toussaint:

In response to the Prosecutor’s examination Toussaint testified that her choice of words was wrong. Initially she said she felt she was taking the correct steps. She tried to save the situation but could not.

Panel Questions of Toussaint:

In response to questions from the Panel, Toussaint testified she sent the Offer to Lease to the email address she received at the showing believing it to be that of one of the listing sales representatives, however, she later learned it was that of the Landlord.

Toussaint further testified she did not terminate the Buyer Representation Agreement with Witness A because she trusted her and thought she was a friend. She confirmed that she did not ask for a business card from the person she met at the showing. When asked if she felt it was safe for her client to pay the deposit directly to the Landlord Toussaint testified, she believed it was because Witness A was dealing directly with the Landlord and the Landlord was trying to rent the space on its own. Toussaint also testified that she did not explain the risk of paying the deposit directly to the Landlord instead of the listing brokerage nor did she explain the existence of deposit insurance protection when deposits are provided to a listing brokerage.

CLOSING SUBMISSIONS FOR THE REGISTRAR, REBBA 2002:

The Prosecution reiterated that case is a simple matter. He went on to say what is not simple is the existence of three individuals named Salvatore Vescio and trying to determine which of them was present at the showing.

The Prosecutor recapped some of the witness testimony including: (i) Witness A testified that the Landlord Representative B was present at the showing as well as the Representative C, son of the nephew of the Landlord representative; (ii) Witness B testified that he was not present at the showing and could not identify who was present, however, based on conversations he had with the nephew Representative B (who was also one of the listing sales representatives of the Property) his co-listing agent did not know who Toussaint was.

The Prosecutor submitted that there is unquestionable evidence that Toussaint knew the Property was listed by another real estate brokerage however she continued to negotiate directly with the Landlord. Even when Toussaint realized she was emailing the Landlord's representative she continued to negotiate directly with him. She prepared the Offer to Lease and submitted it directly to the Landlord representative and not to the Landlord's brokerage or listing representatives.

The Prosecutor further went on to say regarding the deposit Toussaint never questioned the Landlord wanting the deposit paid directly to it instead of the listing brokerage, and there was no explanation of the deposit amount to Witness A other than cutting and pasting the Landlord's calculation in correspondence to Witness A. The Prosecution concluded by saying that the Lease did not move forward and the Witness A has suffered the loss of her deposit.

CLOSING SUBMISSIONS OF THE RESPONDENT

In her Closing Submissions Toussaint said she hopes the Panel can see that Witness A orchestrated this situation because she wanted to deal directly with the Landlord. She does not know why Witness A backed out of the deal. She felt there is a lot of confusion regarding who was present at the showing. She said that when she sent the Offer to Lease to Witness A, Witness A signed it and then decided to deal with the Landlord directly.

Toussaint reiterated that she was only helping Witness A out of friendship and that it is her own fault that she never terminated her Buyer Representation Agreement with Witness A when Witness A started dealing directly with the Landlord. She concluded by saying she only relayed the deposit information to Witness A and asked her to give the deposit to the person who was present at the showing.

CODE OF ETHICS

The Registrant is governed by the *Real Estate and Business Brokers Act, 2002*, S.O. 2002, c.30, Schedule C ("*REBBA 2002*").

This Discipline Committee is established to hear and determine these issues, in accordance with the prescribed Regulations. The Discipline Committee must determine if the Registrant has failed to comply with the Code of Ethics established by the Minister in accordance with Section 21 of the *REBBA 2002*.

Section 50 of the *REBBA 2002* provides that the Minister may make Regulations establishing a Code of Ethics for the purposes of subsection 21(1).

Ontario Regulation 580/05 is the Code of Ethics pursuant to the *REBBA 2002* and is the Code of Ethics that governs these proceedings.

FINDINGS BY THE PANEL:

Having carefully considered the testimony of the witnesses at the Hearing, and the documentary evidence, the Panel has arrived at the following conclusions:

The Panel finds Toussaint in breach of sections 3, 4, 5, 7, 29, 38 & 39 of the Code of Ethics.

Allegation A

As the buyer's representative, Toussaint dealt directly with the Landlord (1152030 Ontario Inc.) when Toussaint knew or ought to have known, that the Landlord was a client of landlord's brokerage, contrary to sections 3, 7, 38 and 39 of the Code of Ethics.

The Panel gave great weight to the following facts established by the evidence. Although Toussaint kept referring to the Landlord attempting to rent the Property by its own efforts, Toussaint came to know of the Property via the Toronto Regional Real Estate Board's MLS system and she made her appointment to show the unit via Broker Bay with the listing brokerage identified on the MLS listing.

After the showing, she emailed one of the listing representatives with questions. Who was, or was not present at the showing does not change the significance of this evidence that she clearly knew the Property was listed by another brokerage.

Toussaint testified she believed she had emailed the Offer to Lease to one of listing representatives but shortly thereafter she clearly came to know that was not the case and that, in fact, it was the email of the Landlord and even with this knowledge she continued to negotiate directly with the Landlord. Toussaint also suggested in her testimony that Witness A was negotiating directly with the Landlord but was unable to provide any proof. Conversely, the Prosecution provided ample evidence of text messages directly between Toussaint and the Landlord wherein Toussaint is clearly negotiating directly with the Landlord (see Exhibit 3, pages 496-500). Regardless of who may have been present at the showing, the evidence overwhelmingly establishes that Toussaint was negotiating directly with the Landlord, and she was fully aware that the Landlord was represented by a listing brokerage at the time.

Toussaint, by her conduct, did not treat every person she dealt with in the course of a trade fairly, honestly and with integrity and therefore she breached section 3 of the Code of Ethics. She violated s.7 by dealing directly with a person who was represented by registrants. She did not use best efforts to prevent error or unethical practice contrary to

section 38 of the Code of Ethics and she is in violation of section 39 of the Code of Ethics since her conduct, having regard to all of the circumstances, would reasonably be regarded as unprofessional and unbecoming a registrant.

Allegation B

Toussaint failed to properly advise or protect the interests of the Tenant by instructing the Tenant to make a deposit into the Landlord's private account, instead of paying it to the listing brokerage, before the Tenant's offer was even accepted by the Landlord, contrary to sections 4, 5, 29, 38 and 39 of the Code of Ethics.

In Witness A testimony she said that Toussaint told her to make the deposit cheque payable directly to the Landlord. Toussaint did not dispute this. She admitted during her testimony that this occurred despite the fact that the Offer to Lease provided that the deposit be paid to the listing brokerage to be put into trust, and despite the fact that there was no sign back on the Offer to Lease.

Toussaint admitted when questioned by the Panel that she did not advise her client that there were risks in providing the deposit directly to the Landlord and she did not advise Witness A that deposit insurance would only protect funds paid to the listing brokerage. Toussaint did not promote and protect the best interests of her client and is in violation of s.4 of the Code of Ethics. She did not provide conscientious service, nor did she demonstrate reasonable knowledge, skill, judgment, and competence and thus she is in breach of s. 5 of the Code of Ethics. She has violated s. 29 of the Code of Ethics which provides that if a registrant is representing a client and an agreement is entered into in connection with a trade, the registrant is to deliver deposits in accordance with that agreement.

The Offer to Lease clearly stipulated at paragraph 5 that the deposit, which was specifically set out, was to be delivered by cheque payable to Century 21 Heritage. Toussaint failed to use best efforts to prevent error or unethical practice, and her conduct

could reasonably be regarded as unprofessional and unbecoming and as such, by virtue of her conduct described above she is also in violation of sections 38 and 39 of the Code of Ethics.

Allegation C

Toussaint failed to properly advise the Tenant on the correct draft deposit amount, contrary to sections 5, 29, 38 and 39 of the Code of Ethics.

Without any doubt the Panel feels the evidence clearly substantiates Toussaint's inability to handle the calculation of the deposit. The evidence established that there were text messages between Toussaint and Baiye wherein Toussaint changes the deposit amount several times.

This is concerning especially when considered together with her failure to seek clarity on the Landlord's calculation and considering the act of Toussaint simply providing the deposit figure by cutting and pasting the figure she received from the Landlord into a text message to Baiye.

This demonstrates without doubt that Toussaint did not have clear knowledge, skill, competence or understanding of the deposit. She did not provide conscientious service, nor did she demonstrate reasonable knowledge, skill, or competence and thus is in violation of section 5 of the Code of Ethics. She did not deliver the deposit in accordance with the Offer to Lease contrary to s. 29 of the Code of Ethics. Her conduct shows that she did not use best efforts to prevent error contrary to s. 38 of the Code of Ethics and her conduct in all of the circumstances would reasonably be regarded as unprofessional.

Conclusion

On the balance of probabilities and based upon the abundance of evidence presented by the Prosecution the Panel finds Toussaint in breach of sections 3, 4, 5, 7, 29, 38 and 39 of the Code of Ethics.

[Released: March 27, 2025]