



Real Estate Council of Ontario

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## **DISCIPLINE DECISION**

**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:**

**REGISTRAR UNDER THE *REAL ESTATE AND BUSINESS BROKERS ACT, 2002***

**- AND -**

**SUZETTE THOMPSON**

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**This document also contains the Appeals Decision, dated May 31, 2012**

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**DATE OF DECISION:** June 15, 2011

**FINDINGS:** In violation of Sections 3, 37(1), 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 Respondents.

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 was held on June 14 and 15, 2011 in the presence of the Respondent, Suzette Thompson (the “Respondent” and/or “Ms. Thompson”); Lawyer A, counsel for Ms. Thompson; Robert Maxwell, counsel for the Registrar, *Real Estate and Business Brokers Act 2002* (“REBBA 2002”); and independent legal counsel to the Discipline Panel.

#### **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, 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.

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

In its allegation statement the Registrar, *REBBA 2002* alleged the following:

Former Registrant is a member of RECO and at all relevant times was registered as a salesperson with the brokerage, Brokerage 1 up until March 31, 2008 at which time her registration was transferred to the brokerage, Brokerage 2.

Suzette Camille Thompson ("Ms. Thompson") is a member of RECO and at all relevant times was registered as a salesperson with the brokerage, Brokerage 3 up until April 18, 2008, at which time her registration was transferred to the brokerage, Brokerage 4.

On or about January 12, 2007 the Former Registrant and Ms. Thompson signed a mortgage approval and a mortgage application (collectively called the "Mortgage Application") and accepted the terms of the mortgage in Ontario through the Mortgage Broker Company and its mortgage agent, Mortgage Agent, to support the Former Registrant and Ms. Thompson's purchase of 1-Street, City 1, Province 1 (the "Property") for \$575,000.00.

The Mortgage Application stated (among other things) that:

- a) The Former Registrant and Ms. Thompson's current employer was given as the brokerage City 1/Brokerage A, in City 1 where they each had worked for the past year and each earned a gross annual income of \$96,000.00 per year at the City 1/Brokerage A as "real estate agents";
- b) The Former Registrant's previous employer was given as Brokerage 1 where she worked for 2 years with a gross annual income of \$80,000.00 as a "real estate agent" and Ms. Thompson's previous employer was given as Brokerage 3 where she worked for 1 year with a gross annual income of \$85,000.00 as a "real estate agent".
- c) The Former Registrant and Ms. Thompson's present address was in City 1 and had been for 1 year and both their work and home contact particulars were in City 1; and
- d) The Former Registrant and Ms. Thompson warranted, confirmed and certified that the information given on the Mortgage Application was true and corrected.

Attached to the Mortgage Application were income tax returns for the Former Registrant and Ms. Thompson and bank statement particulars for the Former Registrant.

Based upon the information in the Mortgage Application, the Financial Institution 1 approved the mortgage and on March 1, 2007 the Financial Institution 1 advanced mortgage funds in the amount of \$563,456.00 for the purchase of the Property by the Former Registrant and Ms. Thompson.

The Financial Institution 1 became suspicious when the Former Registrant and Ms. Thompson missed the second or third mortgage payment on the Property, and Ms. Thompson called the Financial Institution 1 from Province 2, rather than City 1.

With the mortgage in arrears, the Financial Institution 1 checked the City 1 phone numbers for work and home, which the Former Registrant and Ms. Thompson had provided on the Mortgage Application, and discovered the Former Registrant and Ms. Thompson could not be reached at the contact particulars provided in the Mortgage Application.

The telephone number for the City 1/Brokerage A on the Mortgage Application was the cellular number for Individual A, who was an associate at the City 1/Brokerage A until January 7, 2008 when he terminated his licence with the City 1/Brokerage A.

The Financial Institution 1 called and spoke with the Manager of the City 1/Brokerage A who confirmed that the Former Registrant and Ms. Thompson have never been employed by the City 1/Brokerage A.

The Financial Institution 1 finally contacted Ms. Thompson at a City 2 phone number and she stated that they were still in City 2 and doing renovations on the Property and that it was not a revenue home.

With the mortgage in arrears, the Financial Institution 1 referred the matter to their lawyer (the "City 1 Lawyer") to take action, which he did by noting the Former Registrant and Ms. Thompson in default.

This legal process was stopped when the Former Registrant and Ms. Thompson faxed the Province 1 Lawyer a copy of a Residential Real Estate Purchase Contract whereby Buyer B1 and Buyer B2 (the "Buyers") offered to buy the Property from the Former Registrant and Ms. Thompson as sellers for the purchase price of \$800,000.00 with a \$10,000.00 deposit held by the brokerage, City 1/Brokerage B and a closing date of February 29, 2008. At 6:00 p.m. on December 12, 2007 Ms. Thompson and the Former Registrant accepted the Buyers' offer in City 2, Province 2 and the final signing of the contract (the "Purchase Agreement") occurred at 7:00 p.m. on December 12, 2007 as evidenced by the initials of the Former Registrant and Ms. Thompson as the person(s) who signed last.

The Financial Institution 1 was automatically suspicious of the Purchase Agreement and proceeded to make some inquiries by contacting the listing representative (the "Listing Representative") at City 1/Brokerage B.

On or about January 10, 2008 the Listing Representative advised the Financial Institution 1 that she knew nothing about the sale of the Property and she had terminated the listing in late November or early December of 2007.

The Listing Representative provided the Financial Institution 1 with a copy of the listing for the Property and it was originally listed on or about November 9, 2007 for \$1.3 million.

Further inquiry by RECO confirmed with the broker of City 1/Brokerage B that:

- a) the Listing Representative listed the Property for sale on November 9, 2007;
- b) the listing was cancelled November 23, 2007;

- c) the Listing Representative is a new registrant and when she was asked during the currency of the listing to prepare and fax an offer to purchase to the sellers in the name of the Buyers, she did so without ever meeting either the Former Registrant or Ms. Thompson as the sellers or the buyers;
- d) the Listing Representative never heard back from the sellers regarding the typed offer so she assumed that no deal had taken place;
- e) the City 1/Brokerage B has no copy of an accepted/signed Purchase Agreement;
- f) the City 1/Brokerage B knew nothing about the accepted Purchase Agreement; and
- g) the City 1/Brokerage B has never had any trust deposit in relation to the Purchase Agreement.

The Financial Institution 1 asked the City 1 Lawyer to contact the Buyers' lawyer (the "Buyers' Lawyer") as detailed in the Purchase Agreement and the Buyers' Lawyer had never heard of the Buyers.

The Purchase Agreement has never closed and the belief of the Financial Institution 1 is that the Purchase Agreement was submitted to the City 1 Lawyer to stop the legal process from proceeding.

Further inquiry confirmed that neither the Former Registrant, nor Ms. Thompson, is registered to trade in Province 1.

Further inquiry by RECO confirmed with both the Manager and General Manager of the City 1/Brokerage A that neither the Former Registrant, nor Ms. Thompson, has ever been in the employ of or under contract with the City 1/Brokerage A.

Further inquiry by RECO confirmed that the source of the mortgage referral to the Mortgage Broker Company, which led to the Mortgage Application by the Former Registrant and Ms. Thompson, was Individual A.

Upon being interviewed by RECO, each of the Former Registrant and Ms. Thompson admitted that her income statement attached to the Mortgage Application was false, her gross annual income was significantly over-stated and she was not registered to trade in real estate in Province 1.

The Registrar, *REBBA 2002* alleged that as a result of the foregoing Ms. Thompson acted unprofessionally as follows:

- I. Participated in the creation of a document that was false by signing the Mortgage Application.
- II. Provided false information to the Financial Institution via the Mortgage Application (including without limitation, that she was currently registered to trade in real estate in Province 1, her gross annual income was \$96,000.00, she lived and worked in Province 1 for a year, and false income tax returns) to support the purchase of the Property.
- III. Participated in the creation of a document that was false by signing the Purchase Agreement.
- IV. Provided false information to the Financial Institution 1 via the Purchase Agreement to stop the legal process, which the Financial Institution had initiated because of the mortgage being in arrears, from proceeding.

The Registrar, *REBBA 2002* alleged that Ms. Thompson 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.

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.

**EXHIBITS**

1. Further Amended Revised Notice of Hearing, dated April 20, 2011
2. Registrar's Book of Documents
3. Mortgage Application – Registrar's Book of Documents, Tab 4(h), page 5(a)
4. Registrar's Supplemental Book of Documents
5. Book of Documents of Suzette Camille Thompson
6. Residential Real Estate Purchase Contract, dated January 3, 2008
7. Amendment to the Real Estate Purchase Contract, dated January 31, 2008
8. Listing re: the Property, fax date February 1, 2008
9. Affidavit of Value, dated March 23, 2009
10. Colour Pictures – Registrar's Book of Documents, Tab 4(g), pages 22-30
  - (a) Picture of the front of house
  - (b) Picture of the front of house (taken from the right side)
  - (c) Picture of kitchen
  - (d) Picture of interior
  - (e) Picture of interior (of cabinets)
  - (f) Picture of box (Rona Collection)
  - (g) Picture of deck
  - (h) Picture of side of house
  - (i) Picture of garage
11. Facebook – List of Friends – Suzette Thompson



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

### **1. Complainant**

Counsel for the Registrar had the Complainant explain his position with Financial Institution 1. At the time of the allegation he was the Manager of Recovery in charge of delinquent accounts. He was asked and he confirmed he was familiar with the various documents that were part of the Book of Documents that had been entered as Exhibit #2.

He testified that the mortgage went into default within the first 10 payments and that he was assigned to investigate. The Complainant testified that he attended the Property during his investigation and it was apparent that no one lived there and that the Property was under renovation. The Complainant was asked about the employment information on the mortgage application which stated that both the Former Registrant and Ms. Thompson were employed at City 1/Brokerage A in City 1 and they both earned \$96,000.00. He stated that when he called the Manager of City 1/Brokerage 1, the Manager advised him that he had never heard of the Former Registrant or Ms. Thompson and they had never worked for City 1/Brokerage A.

The Complainant further stated that during the process to foreclose on the Property, the Financial Institution 1 received an Agreement of Purchase and Sale, which indicated the Former Registrant and Ms. Thompson were selling the Property to Buyer B1 and Buyer B2 for \$800,000.00 with a closing date of February 29, 2008. He testified he was automatically suspicious and in early January he contacted the listing agent, Individual B. Individual B indicated to him that she hadn't sold the property and she had taken it off the market. Individual B did provide him with a copy of the listing that expired on January 10, 2008 that indicated it had been listed for \$1.3 million.

The Complainant also had Financial Institution 1's solicitor call the Buyers' lawyer, Lawyer 1, as noted in the Agreement of Purchase and Sale. The Complainant stated that Financial Institution 1's lawyer had advised him that Lawyer 1 had no knowledge of the Buyers or the Agreement of Purchase and Sale.

The Complainant testified that it appeared to him that the Former Registrant and Ms. Thompson tried to stall the foreclosure process by sending a false Agreement of Purchase and Sale and therefore allowing the Buyers time to redeem the Property. He also stated that Financial Institution 1 would not have agreed to the redemption based on a false Agreement of Purchase and Sale.

During cross-examination, the Complainant was asked if Financial Institution 1 relied on the expertise of the Mortgage Broker and the Lawyer associated with the Agreement of Purchase and Sale. He stated Financial Institution 1 does and the Lawyer acting for the Buyer and Financial Institution 1 and the Former Registrant and Ms. Thompson, was on the approved list for Financial Institution 1. He also testified that the Mortgage Agent must also be on the approved list.

He was asked if the fact that the Mortgage Broker was in City 2 was a red flag. He was also asked if Financial Institution 1 would read the Agreement of Purchase and Sale as part of the Mortgage Application process to which he answered in the affirmative to both. The Complainant was asked if he noticed that the Agreement of Purchase and Sale and all the amendments were signed in City 2 and in fact indicated that the Buyers were licensed Realtors in Province 2. He was also asked if he noticed that while the Mortgage Application states the applicants had lived in City 1 for one year, the credit reports and Agreements all indicate they lived in City 2. He answered that he read that but he wasn't part of the approval and he didn't see the file until after it went into default.

The Complainant was asked to explain the obligation on Financial Institution 1 on default of a mortgage. He advised that they would try to collect and failing that they would foreclose and then eventually sell the property. Any shortfall would then be covered by CMHC. He acknowledged that Financial Institution 1 would not be out any money.

He was asked why Financial Institution 1 was not more thorough with their mortgage applications. He stated that Financial Institution 1 was in the mortgage business and

they wanted to approve not decline as many as possible. They also relied on the information from the mortgage broker and took that information at face value. He testified that they didn't check with the Mortgage Agent on the authenticity of his information.

The Complainant was asked about his inspection of the Property. He said that while he was not able to go inside, he was able to look through the windows. He noted that there were new decks, windows, new kitchen cabinets and what appeared to be a new dishwasher or stove. He acknowledged that substantial upgrades were being performed and that the Property did not appear to be abandoned.

## 2. RECO Investigator

Counsel for the Registrar had the RECO Investigator explain her qualifications and employment history with RECO and took her through various documents that had been entered into evidence.

The RECO Investigator was asked about Exhibit #6 which was an Agreement of Purchase and Sale for the Property for \$850,000.00, between the Former Registrant and Ms. Thompson as Sellers and Buyer C as Buyer, dated January 3, 2008. She indicated that she first saw this yesterday and she received it from Financial Institution 2.

She was also asked to identify a listing contract and a MLS listing data printout dated November 9, 2007 which indicated a listing price of \$1,300,000.00. She was also asked about Exhibit #8 which is another Listing Agreement for the Property with a listing price of \$890,000.00 which she indicated she had received from Financial Institution 2. She was asked to compare the two listings and she indicated that it was her opinion that they appeared to be the same listing with the listing price having been altered.

The RECO Investigator was asked to compare the Agreement of Purchase and Sale that was located in Exhibit #5, Tab 2 and that of Exhibit #6 both of which were for the

sale of the Property from the Former Registrant and Ms. Thompson to Buyer C. She noted that in Exhibit #5, which was provided by the Respondent, the seller and buyer's representative was blank. In Exhibit #6, which she received from Financial Institution 2, the buyer and seller's representative is identified as Individual B of City1/Brokerage B. She was asked what she thought the significance of this was and indicated that a mortgage lender would look more favourably on an application if the sale was shown to be handled by a real estate professional.

The RECO Investigator was asked from where she received the mortgage invoice checklist and the mortgage approval which was located in Exhibit #2, Tab H. She indicated she received it from Individual D who was with the City 2 office of the Mortgage Broker Company. She testified that Individual D told her that the Mortgage Agent was no longer employed with the Mortgage Broker Company and that the source of the referral was Individual A who was an agent from City 1/Brokerage A.

The RECO Investigator was asked to identify a letter from the Manager of City 1/Brokerage A, which was located in Exhibit #2, Tab I. She indicated she had contacted the Manager of City 1/Brokerage A as part of her investigation and he had advised in the letter that the Former Registrant and Ms. Thompson had never been registered in Province 1 and they had never been employed by City 1/Brokerage A. The letter also confirmed that one of the phone numbers that had been provided was the cellular phone number of Individual A, who was one of his associates until he was terminated January 7, 2008. He also stated in the letter the address of residency in City 1 that was provided on the mortgage application shows as non-existent on the City 1 website.

The RECO Investigator was asked about her telephone interview with Individual B of City 1/Brokerage B. She asked Individual B if she had met or if she knew the Former Registrant or Ms. Thompson. The RECO Investigator testified that Individual B told her that she had no idea who Ms. Thompson was and she had never met her. Individual B indicated that she had met the Former Registrant a few years ago but her contact with

her was minimal. She also had told the RECO Investigator she thought the Former Registrant was Individual E's relative.

The RECO Investigator stated she asked Individual B if she had prepared the Buyer B1 and Buyer B2 Agreement of Purchase and Sale and Individual B indicated that she had prepared it and had faxed it to the Buyers. Individual B also stated to the RECO Investigator that Individual E had called her the next day and asked her to take the property off the market.

The RECO Investigator testified she asked Individual B when was the last time that she communicated with the Former Registrant and Ms. Thompson. Individual B answered that she only spoke to Ms. Thompson once and that was to confirm fax numbers.

The RECO Investigator was asked about her telephone interview with the Broker/Owner of City 1/Brokerage B. The RECO Investigator testified that the Broker/Owner provided the following facts:

- Individual B listed the property on November 9, 2007 and the listing was cancelled November 23, 2007;
- City 1/Brokerage B had no copy of the accepted/signed offer and no trust deposit;
- He had concerns when he learned that Individual B was dating Individual E's relative; and
- He advised Individual B to be careful because he had prior dealings with Individual E and her mortgage agent in Province 2 and their use of nominee's on contracts.

The RECO Investigator was asked if she was familiar with Exhibit #9 and she identified it as an Affidavit of Value for the Property which indicated the value to be \$450,000.00 as of March 18, 2009.

During cross-examination the RECO Investigator was questioned about various aspects of the investigation, particularly concerning some seemingly apparent discrepancies between the anticipated evidence of the Complainant in Exhibit #2, Tab 2A and that of the telephone interview of Individual B in Exhibit #2, Tab 4J.

She was asked why she hadn't interviewed the mortgage broker, Mortgage Agent, and whether she had considered having him subpoenaed, to which she replied she had no thought to do so.

The RECO Investigator was asked to look at the Mortgage Broker Company Invoice Checklist in Exhibit #2, Tab 4H, and identify how much the Mortgage Agent made, to which she replied \$4,665.42.

She was asked if she knew where the Mortgage Agent was and she replied she didn't know.

During further cross-examination, the RECO Investigator was asked to look at Exhibit #3 which appears to be page 1 of the mortgage application and Exhibit #2, Tab 4H, page 6, which appears to be the second page of the mortgage application. It was noted that page one of the application, which had no signature, had the false City 1 address and the false employment information and page 2 of the application, which was signed, appeared to have the correct information. The RECO Investigator was then asked to look at the fax header stamp on each page and it was suggested that it appears that they had different dates. She testified that she couldn't confirm that they were the same document.

The RECO Investigator was asked who she thought provided Ms. Thompson's information to Financial Institution 1 to which she replied that it was provided by the Mortgage Agent and not directly from Ms. Thompson to Financial Institution 1.

The RECO Investigator was asked what she thought the significance of a private sale with no real estate representation vs. a sale where the Buyer was represented by a real estate representative. She stated that she thought a sale that had representation would provide the mortgage lender a greater assurance of the information and the lender might be less vigilant.

The RECO Investigator was asked to compare the initials of Exhibit #6, the Agreement of Purchase and Sale between the Former Registrant/Ms. Thompson and Buyer C. She testified that it appears that the page which identified Individual B as both the Seller and Buyer representative had a different set of initials.

#### **WITNESSES FOR THE RESPONDENT**

1. Suzette Thompson

Ms. Thompson began by providing detail of her licensing history and stated that she had never been licensed or has worked as a real estate representative in Province 1. Ms. Thompson testified she grew up in City 1 and attended high school with Individual E. She stated that while she had a good credit rating, she did not have a lot of money.

In 2005 and again in November 2006, she had serious health issues as well as emotional problems that left her in somewhat of a depressed state.

Ms. Thompson said that Individual E came to City 2, before one of Ms. Thompson's admissions to hospital, to explain about a great opportunity for a joint venture with the goal to flip the property described above. Individual E said she had a great real estate agent, Individual F, and a mortgage broker, Mortgage Agent, lined up.

Ms. Thompson testified that she told Individual E she had no ability to pay to which Individual E said she had bad credit but was prepared to provide all the money.

Ms. Thompson said she trusted Individual E and gave her Social Insurance Number in November 2006. Although her credit rating was good, while she was in hospital the application was declined.

She went on to say that Individual E called her in January 2007 to say the property was still available and she was going to add the Former Registrant as an additional buyer.

Ms. Thompson stated that her employer was Brokerage 3 in Province 2 and she lived at an address in City 2. When questioned about her employment and where she lived, she stated that she did not provide the false employment information and City 1 address and she did not authorize it.

Ms. Thompson went on to say that partly because of her health and the fact that Individual E lived in City 1, almost all of the communication was done by fax.

Ms. Thompson was then asked to look at Exhibit #2, Tab 4H, page 6, the second page of the mortgage application. She confirmed it was her signature and fax header. She was then asked to look at Exhibit #3 which was page one of the mortgage application, on which there were no signatures or initials and she testified that she did not provide the Calgary addresses nor the employment information or list of assets. She testified she had difficulty reaching the mortgage agent on the phone, so she had faxed the unsigned application back without advising that the information was wrong and it needed to be fixed.

She stated that she was advised that the mortgage application with the Former Registrant was accepted but that she really didn't know much information about the Former Registrant.

Ms. Thompson continued, that she never signed the Agreement of Purchase and Sale. It was the Former Registrant who signed the Agreement of Purchase and Sale as well



as the Amendment that added her as an additional buyer. That Amendment also clearly stated that she was a licensed Realtor in Province 2.

Ms. Thompson testified that after they took possession she viewed the house and noticed it was on a large lot and was clean but needed work. She was told that there was a property on the street that was listed at over \$1 million.

Ms. Thompson went on to say that her contribution was to provide the working drawings for the renovations, and they planned to live there once they were finished, if they weren't able to sell it. She also stated that she was considering the possibility of getting licensed to sell real estate in Province 1.

She went on to say that she was back into the hospital in March and Individual E was to supervise the construction and pay the mortgage. She stated she called the Complainant from City 2. She told him that the house was under renovation and she was unable to live in it at that time. After Individual E had deposited the money in her account, she purchased a money order and sent it to Financial Institution 1.

Ms. Thompson was then asked about the Agreement of Purchase and Sale with the Buyers B1 and B2. She stated that she never followed up or confirmed the Agreement. As for the deposit she assumed that it went to the City 1 agent.

She further testified that she never met Individual B, but she did receive a call from her in December.

Ms. Thompson was asked about the Agreement of Purchase and Sale with Buyer C and confirmed that the property closed in February and both the first and second mortgages were paid off. She also stated that she didn't profit from the sale. She testified that Buyer C is the relative of Individual E and she thought that he was friends with Individual B.

She testified that she didn't realize anything was wrong until contacted by the RECO Investigator.

During her interview with the RECO Investigator she stated that she had lived at an address in City 1 with Individual E and the Former Registrant. When asked about this she answered that she had provided an incorrect answer to the RECO Investigator.

Ms. Thompson was asked if she looked at the mortgage approval which stated that a special condition of the mortgage was that the mortgagee required confirmation of the self-employed income of \$96,000.00 for the Former Registrant and Ms. Thompson. She answered in the affirmative but she assumed it was a combined income with the Former Registrant contributing \$90,000.00 and her contributing \$6,000.00.

During cross-examination, Ms. Thompson was asked about her relationship with Individual E and stated that she was raised in City 1 and lived there until 1999. She was friends with Individual E and went to school with her. She met the Former Registrant in 1999 and knew her socially and knew she was a relative of Individual E. She stated that she remembered Buyer C from high school. Individual B she had just met.

Counsel for the Registrar asked Ms. Thompson about the eventual sale to Buyer C. She testified that when the property was sold it was still under renovation. She stated that any profit from the sale was to be shared 1/3 each between Individual E, the Former Registrant and herself.

Counsel for the Registrar asked how the Buyer C sale price was \$850,000.00 went up from the \$800,000.00 purchase price of the Buyers B1 and B2 sale to which she replied that she was not part of those negotiations and that she was presented with the offer and just signed it.

Ms. Thompson stated that she thought they made about \$60,000.00 profit or \$20,000.00 each from the sale to Buyer C. When asked how that added up considering

the \$850,000.00 sale less the discharge of the first mortgage at \$550,000.00 and a second mortgage of \$100,000.00, she was uncertain.

Counsel for the Registrar asked if she was still best friends with Individual E to which she responded that as a result of this they had a falling out, and they were no longer friends. When Counsel for the Registrar suggested she was still friends with them all and produced a printout of her Facebook page which listed Individual A, the Former Registrant and the Mortgage Agent as friends she replied she was no longer friends with them. Ms. Thompson indicated that in spite of the falling out she had not ceased all communication with them as she needed their cooperation for this investigation.

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

Counsel for the Registrar submitted that Ms. Thompson was part of a circle of people that were all part of a fraud. Individual A was an employee of City 1/Brokerage A, the same company that was her fictitious employer on the mortgage application. She was a friend with Individual E since high school and that Individual E was the actual purchaser of the property and that Ms. Thompson was her nominee and that they used false information to acquire the mortgage. She was friends with the mortgage broker, Mortgage Agent, as confirmed by her Facebook page, and that she provided incorrect information on the mortgage application or at the least faxed back an application with incorrect information without requesting any changes or identifying any errors. Counsel for the Registrar concluded that by Ms. Thompson's testimony that she had realized the mortgage application was wrong and that she had faxed it back. Ms. Thompson knew that a misrepresentation was going on. Ms. Thompson also told the RECO Investigator that she had lived at the City 1 address that was provided in the mortgage application, when in fact she did not. Counsel for the Registrar noted that Ms. Thompson stated that the incorrect information was not her fault and that she was a victim of the Mortgage Agent. Counsel for the Registrar's position was she fully knew what she was doing or at the very least she was careless, wilfully blind or reckless.

With respect to the Buyers B1 and B2 Agreement of Purchase and Sale, it is Counsel for the Registrar's position that this sale was nothing more than a vehicle to stop the foreclosure. This Agreement of Purchase and Sale was never going to close, as evidenced by RECO's Investigator's interview of Individual B that she never met the Buyers and she never showed them the property and further that the Agreement was conditional on the Buyer's lawyer's approval and the Buyer's lawyer was never made aware of the sale. Also evidence showed that the Listing Brokerage never received a copy of the signed/accepted Agreement of Purchase and Sale nor did they receive a trust deposit.

With respect to the sale to Buyer C, Counsel for the Registrar submitted that this transaction showed evidence of a typical mortgage fraud, by the fact that it was a non-arm's length sale, it went quickly into default and it resulted in a substantial loss of almost \$400,000.00 to Financial Institution 2.

### **SUBMISSIONS FOR THE RESPONDENT**

Counsel for Ms. Thompson stated that Ms. Thompson was not party to any misrepresentation that resulted in any kind of fraud and that she was merely a victim. She was far more than a nominee and that she brought a skill and value to the relationship. With respect to the false information on the mortgage application he submitted that it was shown she made a substantial effort to correct it but was unable to contact the Mortgage Agent and faxed back the unsigned application in order for him to correct it. It was also stated that during the sale process she was in City 2 and she had to rely on Individual E. It was Ms. Thompson's belief that she was only needed for her name and credit rating and was not needed for anything else in order to purchase the property. She was also of the understanding that when the Former Registrant's application was rejected she only required an income of \$7000 - \$8000 to push them over the top.

Counsel for Ms. Thompson also questioned the depth of the RECO investigation. It appears nobody interviewed the Mortgage Agent and they didn't go behind the

information. While it is apparent that this was a bad deal, the only party that suffered a loss, Financial Institution 2, appeared not to be overly concerned, as evidenced by the fact they did not appear at the Hearing.

Counsel for Ms. Thompson concluded that there was evidence of many scoundrels in the history of this property but Ms. Thompson was not one of them. While Ms. Thompson was part of the group she was no more than a victim and guilty of at most nothing more than being careless.

### **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:

There is no disputing the fact that the information on the mortgage application was false. As to whether Ms. Thompson participated by signing the application, evidence presented indicated she did sign the signature page. Ms. Thompson testified that the signature page that she signed had no reference to any of the falsified information and that this page was altered by other parties without her knowledge. She further testified that when presented with the application for signature, she realized that it contained false information and that she tried to call the Mortgage Agent to get it corrected. When she was unable to reach him by phone, she faxed back the incorrect application with no changes. The Panel believes that at the very least Ms. Thompson was aware that the application was being falsified and she failed to take measures to prevent the fraud. The Panel felt it was unlikely that Ms. Thompson would fax back the application with the false information without any notation as to what information was incorrect if it was her intention to correct it.

Ms. Thompson testified she was not party to providing the false information to the Financial Institution and that this information was provided by others. Ms. Thompson indicated she never lived or worked in Province 1 in the year prior to the mortgage application and she never stated that her gross income was \$96,000.00. The Panel

found that her explanation that she thought the \$96,000.00 was a combination of \$90,000.00 from the Former Registrant and the balance of \$6,000.00 from her, to not be believable. Ms. Thompson, as a real estate professional, ought to have known that a mortgage in the amount of \$563,456.00 would require an income well in excess of \$100,000.00. There was also no evidence that she inquired as to how much the Former Registrant made in order to assume her income of \$6,000.00 would be all that was required. The Panel also felt that she was fully aware of the false address of residency as listed on the application. Her statement, to the Investigator, that she lived at an address in City 1 and that she, Individual E and the Former Registrant all contributed to the rent, was very credible. The Panel found it difficult to believe that she was mistaken in her comment to the RECO Investigator, when she provided such a detailed recollection.

Further the Panel felt Ms. Thompson did participate in the creation of a false document in the Buyers B1 and B2 Agreement of the Purchase and Sale and knew that the false Agreement of Purchase and Sale, when provided to the Financial Institution, would stop the legal process. A number of factors led to the Panel's belief that this was a concocted document designed to interrupt the foreclosure process. It was felt that it is very unusual that a property, that is over-priced and facing foreclosure, would be taken off the market so quickly prior to a sale, have no showings and then have a Buyer materialize that has never seen the property. The Panel also found it difficult to believe that this was a bona fide agreement when the only action taken was to fax it to Financial Institution 1. There was never a deposit paid nor was a copy of the agreement provided to the listing agent. The Agreement was conditional upon the Buyer's lawyer reviewing it, but evidence showed that was never fulfilled. In fact, the Buyer's lawyer that was identified on the Agreement had never heard of the Purchasers and knew nothing of the Agreement.

The Panel concluded that while Ms. Thompson may not have been the driving force in this fraud, she was a willing and knowledgeable participant, or at the very least she should have recognized the fraud and should have taken steps to prevent it. It was

obvious to the Panel that she had a previous association with many of the participants and it appears she still had a connection with some to date.

For these reasons, the Panel agrees that Counsel for the Registrar has proven that Ms. Thompson breached section 3 – Fairness, honesty, section 37.1 – Inaccurate representations, section 38 – Error misrepresentation, fraud, and section 39 – Unprofessional conduct, under the Code of Ethics.

### **PENALTY**

RECO 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 RECO its written submissions on penalty and costs in response to RECO's submissions within 15 days of the date on which RECO's submissions on penalty and costs are delivered to the Respondents.

RECO 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 RECO.

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

The panel shall deliver its Decision on penalty and costs after considering the written submissions of the parties.

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



## **DISCIPLINE DECISION**

**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:**

**REGISTRAR UNDER THE *REAL ESTATE AND BUSINESS BROKERS ACT, 2002***

**- AND -**

**SUZETTE THOMPSON**

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The Panel held a teleconference on September 19, 2011 to discuss the written submissions by all Parties with respect to Penalty and Costs. The Panel decided as follows:

**DATE OF DECISION:** September 19, 2011

**PENALTY:** Fine of \$10,000.00 payable to RECO within 180 days of sending this decision.

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

**COSTS AND EXPENSES:** N/A

**WRITTEN REASONS:**

### **REASONS FOR DECISION**

The Panel received written submissions on Penalty and Costs from Counsel for the Registrar, REBBA 2002 and Counsel for Ms. Thompson, and the Panel convened via teleconference to review and make a determination on penalty.

The Panel, after carefully considering the submissions of both parties, came to the following conclusions.



While the Panel fully agrees that fraudulent behaviour is among the most serious types of unethical activity that can be engaged by a registrant, there are various degrees and circumstances that can be taken into consideration when determining penalty.

It is the Panel's opinion that while Ms. Thompson should have recognized the fraud and taken steps to prevent it, she was not the mastermind and only an accessory to it.

It is also noted that Ms. Thompson was not representing one of her clients in this circumstance and therefore was not in violation of her fiduciary duties.

In the Decision of the Manager of Complaints, Compliance and Discipline v. Joshi, it was apparent to the Panel that Mr. Joshi was the mastermind, from start to finish and it was he who perpetrated the fraud against his client.

The Panel also noted that prior to this finding, Ms. Thompson had no previous disciplinary actions and in the four years since there have been no new accusations of any wrongdoing.

The Panel felt that Ms. Thompson would benefit from additional education that would help her recognize the potential of fraud.

Accordingly, based on the reasons set forth herein, the following penalty is imposed:

1. A fine of \$10,000.00 shall be paid by Ms. Thompson to RECO within 180 days of sending this decision; and
2. The successful completion of the course "Ethics and Business Practice" from the Real Estate Institute of Canada, and provide RECO with confirmation of successful completion within 180 days of sending this decision.

As no submissions for costs were submitted by either party in this proceeding, none has been awarded by the Panel.



## **APPEALS DECISION**

### **IN THE MATTER OF AN APPEALS HEARING HELD PURSUANT TO THE *REAL ESTATE AND BUSINESS BROKERS ACT, 2002***

**BETWEEN:**

**REGISTRAR UNDER THE *REAL ESTATE AND BUSINESS BROKERS ACT, 2002***

**- AND -**

**SUZETTE THOMPSON**

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**DATE OF DECISION:** May 31, 2012

**FINDING:** The Appeal, with respect to penalty, is allowed.

**ORDER:**

1. An Order modifying the Order of the Discipline Committee with respect to its monetary penalty, dated September 19, 2011, and imposing a Fine of \$18,000.00 payable to RECO within 180 days of sending this decision.
2. An Order affirming the Order of the Discipline Committee with respect to its educational penalty, dated September 19, 2011, regarding successful completion of the Real Estate Institute of Canada (REIC) "Ethics and Business Practice" classroom course and provide RECO with confirmation of successful completion within 180 days of sending this decision.

**WRITTEN REASONS:**

#### **REASONS FOR DECISION**

This is an appeal to the Appeals Committee of the Real Estate Council of Ontario ("RECO") from a Discipline Committee ("the Lower Panel") decision that was rendered on June 15, 2011.

The Appellant in this appeal is the Registrar under the *Real Estate and Business Brokers Act, 2002* ("the Registrar").

The matter before the Appeals Committee (“the Appeals Committee” or “this Panel”) stems from the Order of the Lower Panel as it relates to the penalty imposed on the Respondent, Suzette Thompson. The facts related to this matter are not in dispute on appeal. The facts and background can be summarized as follows.

1. *Suzette Thompson, the Respondent, is a registrant and at all relevant times was registered with Brokerage 3.*
2. *The Respondent was involved in the purchase, mortgage financing, a putative sale, and an actual sale of 1-Street (the “Property”) in City 1, Province 1. In this regard she did not participate as a registrant but rather as a principal.*
3. *The undisputed facts are that Financial Institution 1 financed the purchase of the Property. The Respondent completed and submitted a mortgage application to Financial Institution 1 in which she falsified where she lived, where she was employed, how much she annually earned as real estate salesperson, and the extent of her assets.*
4. *The Respondent sent the mortgage application containing the false information from her home fax machine to a mortgage agent working at the Mortgage Broker Company.*
5. *As part of the mortgage application process notices of assessment in the Respondent’s name purporting to be from the Canada Revenue Agency were supplied to Financial Institution 1. The income reported in the notices was false.*
6. *On or about February 12, 2007 the Respondent became one of the owners of the Property. The reported consideration was \$575,000.00. Approximately two weeks later a mortgage was registered against the title of the Property. The amount of the financing as reported in the registered mortgage was \$563,456.87. The Respondent was one of the mortgagors.*
7. *At no time did the Respondent or the co-owner occupy the Property.*
8. *Shortly after the completion of the purchase of the Property the Financial Institution 1 mortgage was in arrears. As a result the Financial Institution 1 invested and determined that the Property was vacant and undergoing construction. It was not long afterwards that the Financial Institution 1 commenced foreclosure proceedings regarding the Property.*
9. *While the Property was being foreclosed, Ms. Thompson and the co-owner, who was also a sales representative and a member of RECO,*

*listed the property with Individual B and City 1/Brokerage B. The list price was \$1,300,000.00.*

- 10. On or about December 12, 2007 an agreement of purchase and sale for the Property was purportedly entered into, at a purchase price of \$800,000.00. Both the sellers (the Respondent and the Former Registrant) and the buyers were represented by Individual B of City 1/Brokerage B.*
- 11. As a result of the purported agreement of purchase and sale the foreclosure proceedings that had been initiated by the Financial Institution 1 were suspended by the Financial Institution 1.*
- 12. Lawyers for the Financial Institution 1 investigated the validity of the agreement of purchase and sale for the Property. The purported lawyer of record for the buyers indicated he had not been retained and knew nothing about the alleged agreement of purchase and sale. The City 1/Brokerage B also confirmed that no such completed agreement of purchase and sale existed. The brokerage simply listed the Property for sale.*
- 13. On or about January 3, 2008 a further agreement of purchase and sale for the Property was entered into by the Respondent and the co-owner. The purchase price was \$850,000.00. Individual B and City 1/Brokerage B were shown as the sales representative and brokerage, respectively.*
- 14. Their second agreement of purchase and sale closed on February 27, 2008, the consideration shown was \$850,000.00.*
- 15. The buyer was Buyer C. He secured a mortgage from the Financial Institution 2 for \$784,890.00.*
- 16. By April 2009 the Court of Queen's Bench in Province 1 ordered that the Property be sold by the Financial Institution 2. At the time of the order the amount owing on the mortgage was \$823,075.27, and the market value of the Property was estimated at \$450,000.00. Thus losses incurred by the Financial Institution 2 totalled approximately \$373,075.00. When the Property was sold by the Financial Institution 2, actual losses suffered by the lender were \$383,075.27.*

Based on the foregoing facts the Registrar alleged that the Respondent had acted unprofessionally in that:

- (i) The Respondent participated in the creation of a document that was false, namely the mortgage application.*

- (ii) *The Respondent provided false information to the Financial Institution 1 in her mortgage application. Specifically, information related to where she worked, her annual income, where she lived and her income tax returns were all false.*
- (iii) *The Respondent executed an Agreement of Purchase and Sale that was falsely created.*
- (iv) *The Respondent provided a false Purchase and Sale Agreement to the Financial Institution 1 which was false and deceptively stopped the foreclosure proceedings that the Financial Institution 1 had initiated.*

The Discipline Committee, after examining the Exhibits before it, hearing the witnesses for both the Registrar and the Respondent and the submissions of the Registrar and Respondent, found that the Respondent had breached Sections 3, 37(1), 38 and 39 of the Code of Ethics.

Section 3 requires all registrants to treat every person the registrant deals with in the course of a trade in real estate fairly, honestly and with integrity. Section 37(1) requires a registrant to not knowingly make inaccurate representations in respect of a trade in real estate. Section 38 requires a registrant to use his or her best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade. Further, Section 39 provides that a registrant shall not, in the course of trading in real estate, engage in any act or omission that, having regard to all the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming a registrant.

By a decision rendered on September 19, 2011 the Lower Panel by a final Order imposed a fine of \$10,000.00 and required the Respondent to successfully complete the Real Estate Institute of Canada's "Ethics and Business Practise" course. The Registrar now appeals the penalty of \$10,000.00 to this Panel.

#### Grounds of Appeal

In its Notice of Appeal dated November 9, 2011 the Registrar set out twelve grounds of appeal. The Registrar's grounds of appeal can be summarized by referencing

Paragraph 35 of the Registrar's Factum dated January 6, 2012. There the Registrar sets out that "Notwithstanding the fact a matter before a panel of the Discipline Committee of the Real Estate Council of Ontario is a civil matter, the process of fashioning a remedy carries with it certain features that are analogous to the criminal law." The Registrar asserts that a Lower Panel must take the following into account, but did not do so in rendering its decision.

1. *The nature and gravity of the breaches of the Code of Ethics.*
2. *The role of the offending member in the breaches.*
3. *Whether the offending member suffered or gained as a result of the breaches.*
4. *The impact of the breaches on complainant or others.*
5. *The need for there to be specific deterrence to protect the public.*
6. *The need for there to be general deterrence to protect the public.*
7. *The need to maintain the public's confidence in the integrity of the profession.*
8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*
9. *And, the range of sanction in similar cases.*

In support, the Registrar cited the cases of Jaswal v. Newfoundland Medial Board (1996), a decision of the Newfoundland Supreme Court (Trial Division), Law Society of Upper Canada v. Dunstan Dan Senjule (2010), a decision of the disciplinary Panel of the Law Society of Upper Canada, and The Law Society of Upper Canada v. Steven Michael Mucha (2008), also a decision of a disciplinary Panel of the Law Society of Upper Canada. This Panel found these authorities very persuasive in support of the Registrar's summary of the factors a Lower Panel must consider in the imposition of a sanction against a member of the Real Estate Council of Ontario that has been found to have engaged in wrongdoing, breaches of the Code of Ethics and conduct that is unprofessional.

In Paragraph 36 of Jaswal, Justice Green sets out thirteen “non-exhaustive” factors that must be considered by Lower Panels in determining penalty. The factors cited by the Registrar in Paragraph 36 of the Registrar’s Factum are supported by the principals set out in Paragraph 36 of the Jaswal ruling. Further support is found in Paragraph 4 of Senjule, wherein the Hearing Panel noted:

*The primary objective in disciplinary hearings when it comes to penalty is to maintain the public confidence in the legal profession.*

In the matter before the Lower Panel, the Panel had an obligation and responsibility in law to impose a penalty that maintained the public’s confidence in the real estate profession.

The decision of the Hearing Panel in Mucha is relevant to the matter before this Panel. The Panel in that professional misconduct hearing accepted that:

*The standard of review to be applied by the Appeal Panel to a decision of the Hearing Panel on penalty is reasonableness... This means, among other things, that the Appeal Panel is not to consider the matter of penalty de novo. (Paragraph 7)*

The Registrar submitted that the issue therefore before this Panel in taking the factors that the Lower Panel had to consider in imposing a penalty on the Respondent was, was the decision of the Lower Panel reasonable? If it is determined that it was, then the September 19, 2011 decision of the Lower Panel imposing a \$10,000.00 penalty against the Respondent cannot be disturbed.

Counsel for the Registrar began his submissions by providing the Panel with an overview of the undisputed facts as determined by the Lower Panel. In summary the Registrar set out that the Respondent had been found to have provided a false mortgage application in support of the purchase of a property, the Property, in Province 1. That application provided false income information, a false address, false information as to where the Respondent was employed at the time, and false information as to her assets. This false information was faxed by the Respondent from her home fax

machine. There was no third party intervention in this fraud. The Respondent's act of faxing the application demonstrated that she was directly involved in this fraud.

It was not long after the Property was purchased and funds advanced by the Financial Institution 1, the mortgage lender, that the mortgage registered against the Property was in arrears. The Financial Institution 1 commenced foreclosure proceeding. On or about the time the Financial Institution 1 commenced foreclosure proceedings, the Property was listed for sale for \$1,300,000.00. It had originally been purchased for \$575,000.00. In December 2007, the Property was purportedly sold for \$800,000.00. That agreement of purchase and sale, which was false, contained the Respondent's signature. It had the effect of inducing the Financial Institution 1 to suspend its foreclosure proceedings.

In January 2008, a further agreement of purchase and sale was entered into for the sale of the Property. The purchase price was stated as \$850,000.00. The buyer was indicated as Buyer C. This sale closed on February 27, 2008. The Financial Institution 2 provided mortgage funds of \$784,890.00. A little over a year later the Property was sold by the Financial Institution 2. The Financial Institution 2 suffered a loss of \$373,075.21. The sale price was \$450,000.00. A classic mortgage fraud had been perpetrated against the Financial Institution 2 and the Respondent was one of the various participants that were involved. It was the Registrar's submission that even if the Respondent was not the driving force behind the fraud, she was a willing and knowledgeable participant.

Counsel for the Registrar directed this Panel to page 299 of Volume 2 of the Transcript of Proceeding in the hearing before the Lower Panel (June 15, 2011). Under cross-examination regarding the proceeds of sale related to the Buyer C purchase and the proceeds of sale the Respondent answers as follows:

- Q. *Well, how much was it approximately?*
- A. *How much for the entire house?*



Q. *No. I'm asking you how much dollars did you put in your pocket as a result of selling this for \$850,000?*

A. *Between the three of us I think it was \$20,000.*

Q. *Twenty thousand each?*

A. *Yes.*

Q. *So, \$60,000.00 in profit.*

A. *About that.*

The Respondent's testimony unequivocally demonstrated that not only did she participate in a mortgage fraud, but that she benefited financially as a result of her participation.

Counsel for the Registrar submitted that the Lower Panel's decision as to penalty amounted to a palpable and overriding error in law. The decision of the Lower Panel proceeded from a finding that the Respondent was a participant in the mortgage fraud that resulted in a loss of \$373,075.21 to the Financial Institution 2, to a conflicting finding that the Respondent should have recognized the fraud and attempted to stop it.

*The Panel concluded that while Ms. Thompson may not have been the driving force in this fraud, she was a willing and knowledgeable participant or at the very least she should have recognized the fraud and should have taken steps to prevent it. (Lower Panel, Reasons for Decision, page 21.)*

In making this conflicting finding the Lower Panel erred in law. The Panel is bound to find a binary conclusion, not one with two possibilities.

In the Lower Panel's Reasons for Decision related to penalty (Reasons for Decision, September 19, 2011), the Lower Panel further compounded this conflict in its findings by concluding that "... she (the Respondent) was not the mastermind and only an accessory to it." In its Reasons for Decision (June 15, 2011), the Lower Panel had found that the Respondent was "a willing and knowledgeable participant" in the fraud. In its Reasons for Decision (September 19, 2011), the Lower Panel ignored its own findings and concluded that the Respondent was merely an "accessory," someone who merely aided the fraud but did not participate in it. By ignoring its own findings the

Lower Panel made an error in law. The last paragraph of the Lower Panel's reasons related to penalty adds even more confusion as to its findings and decision on penalty.

*The Panel felt that Ms. Thompson would benefit from additional education that would help her recognize the potential for fraud.*

The Lower Panel had clearly concluded that she willingly participated in fraud. The referenced paragraph from the Lower Panel's September 19, 2011 reasons appears to conclude that the Respondent did not recognize that she was involved in a fraud and that further education would make her more knowledgeable in the area of mortgage fraud.

Counsel for the Registrar submitted that the Lower Panel erred in law in not considering two important principals related to the imposition of a penalty in professional regulatory matters, namely the need for the penalty to speak as a specific and general deterrence to protect the public, and concomitantly to maintain the public's confidence in the integrity of the profession. In the instant case the Lower Panel ordered that the Respondent pay a penalty of \$10,000.00. Yet as a result of the fraud that she participated in, she earned a profit of \$20,000.00. Counsel for the Registrar argued that the penalty imposed by the Lower Panel amounted to an error in law because it could not possibly have a specific or general deterrence. It would not deter either the Respondent or other registrants from attempting a similar fraud. As a result, this decision undermines the public's confidence in the integrity of the real estate profession.

The Respondent's submissions focused on three areas: that she was not intricately involved in the mortgage fraud; that the Financial Institution 1 could have prevented the fraud from occurring; and that increasing the penalty of \$10,000.00 would have no significant impact on either general or specific deterrence.

The Respondent took this Panel to the Book of Documents (June 11, 2009), Tab 4, Item J. This is a telephone interview conducted with Individual B on February 5, 2008. Individual B was the listing agent of the Property when the property was listed at

\$1,300,000.00. That listing and the subsequent purported sale of the property were engineered to forestall the Financial Institution 1's foreclosure action.

In the February 5<sup>th</sup> telephone interview Individual B is asked the following questions:

Q. *How did you come to list this property?*

A. *[Individual E] referred this property to me – [Individual E].*

Q. *Have you ever met or do you know [the Former Registrant] or Suzette Thompson (the Respondent).*

A. *Suzette Thompson – I have no idea who this is and I have never met her...*

Q. *Did you see the property at the time of the listing?*

A. *Yes, I met [Individual E] at the property and she showed it to me...*

Q. *Who established the list price?*

A. *[Individual E] advised me that that was what they wanted to list it for. It was all [Individual E]. I told them there was no property comparable with that price. It was a ridiculous asking price but they said they had buyers. I sent comparables to [Individual E]. I may have sent them by email to Suzette or [the Former Registrant], I don't recall or it may be that [Individual E] forwarded the comparables to them.*

Q. *Did you prepare the offer to purchase at \$800,000.00 with Suzette and [the Former Registrant] as sellers...*

A. *Yes, I prepared the offer and faxed to [Buyer B2] and the gentleman – [Buyer B1]. The next day they – [Individual E] asked me to take it off the market. [Individual E] gave me the fax number for [Buyers B1 and B2]. They are from [City 2] and I believe I faxed it (offer) directly to them.*

Q. *Who provided you with the offer particulars?*

A. *[Individual E].*

Q. *Did you show the buyers the property?*

A. *No.*

A telephone interview with the Broker/Owner of City 1/Brokerage B, Individual B's broker, conducted on January 28, 2008 (Book of Documents, Tab 4, Item K) confirmed that Individual B had never met the Respondent. The Respondent submitted that this telephone interview made it clear that her involvement was tangential at best. She

clearly was not the moving or driving force of the fraud, and that the penalty of \$10,000.00 imposed by the Lower Panel recognized this tangential involvement and therefore the penalty should not be increased.

The Respondent submitted that the Financial Institution 1, the lender that provided financing for the purchase of the Property, was less than diligent in processing her mortgage application. The Respondent referred this Panel to the Transcript of the Lower Panel Hearing (June 14, 2011). At page 64 the following exchange occurs between the Respondent and Counsel for the Registrar.

Q. *All right, and what also would be supplied by the broker would be the Purchase and Sale Agreement?*

A. *That's correct (the Respondent).*

Q. *And, any amendments thereto?*

A. *That's correct.*

Q. *All right, and so this is information that [the Financial Institution 1]'s employees would have over and above the simple application by the ---*

A. *That's correct.*

Q. *--- mortgage broker? All right, now you expected that employees from [the Financial Institution 1] would actually look at this material. Is that correct?*

A. *Absolutely.*

Q. *And, you're looking for things like, I would suggest, income statements that don't jive with what is presented in the mortgage statement, correct, looking for things that may set off alarm bells for you, so you could perhaps have some concerns that there's something wrong with the people who were making the application, correct?*

A. *Correct.*

Q. *And, similarly, residence is an issue that would be something to be considered, correct? If they say they live in [City 1] but all these documents were signed in [City 2]?*

A. *Yes, could be, yes.*

The Respondent submitted that the conflicting information in the mortgage application and other documents related to the Property was obvious and that the Financial

Institution 1's "employees" could have prevented the fraud and ultimately the Financial Institution 2 would not have suffered the financial losses that it did. The Respondent's position was that she should not be penalized for the negligent fashion in which the Financial Institution 1's employees processed the mortgage loan for the Property.

As part of her submission related to the role that the Financial Institution 1 employees played in the resulting mortgage fraud, the Respondent submitted that of all the participants in the fraud she, who played the most insignificant role, was the only one that was penalized. She submitted that at the time she was inexperienced, was ill and was dealing with a number of personal issues. She relied on a number of people in her fragile state. Her role was insignificant and the Lower Panel must have considered these factors in determining penalty and therefore this Panel should not disturb the Lower Panel's findings.

Lastly, the Respondent submitted that the \$10,000.00 penalty ordered by the Lower Panel was sufficient to act as a specific and general deterrent. She argued that her admitted profit or gain from the sale of the Property of \$20,000.00 was illusory. The cost of these proceedings and those before the Lower Panel Hearing, as well as some vague references to "costs" associated with the sale of the Property, have effectively eliminated any gain she may have earned. Consequently from a specific deterrence perspective, the penalty of \$10,000.00, in addition to the course she was ordered to take, were more than sufficient to ensure that the Respondent would not re-offend.

The Respondent submitted that neither the amount, nor the severity of the penalty, would have a general deterring impact. There will always be those registrants who will attempt to profit by improper, illegal and unprofessional means. No penalty amount – the Respondent even suggested a penalty of \$50,000.00 – would have a deterrent effect on these registrants. Therefore to impose a higher penalty on the Respondent would merely penalize the least involved participant in the mortgage fraud and the only penalized participant related to the Property without any deterring impact on the RECO membership. The Respondent offered no authorities in support of these submissions.

### Decision of the Appeals Committee

After reviewing and considering the Notice of Appeal, the Appellant's Factum and Book of Authorities, the Respondent's Factum and Book of Authorities, the Record of Documents, the Registrar's Book of Documents and Supplemental Book of Documents, the Book of Documents of the Respondent, Transcripts of the Respondent, Transcript of the Discipline Hearing and after hearing the submissions of the Appellant and the Respondent, this Panel finds that for the reasons that follow that the Lower Panel erred in law in ordering the Respondent to pay a penalty of \$10,000.00. This Panel finds that the penalty is to be increased to \$18,000.00.

This Panel accepts and recognizes that in fashioning a penalty a professional disciplinary body must take into account those factors set out in Paragraph 36 of the Jaswal case by Justice Green. Nine of those non-exhaustive factors were set out in Paragraph 35 of the Registrar's Factum. As a minimum standard this Panel holds that those factors enunciated in the Registrar's Factum must be considered by all Lower Panels in determining penalty orders in disciplinary matters before them.

These factors are as follows:

1. *The nature and gravity of the breaches of the Code of Ethics.*
2. *The role of the offending member in the breaches.*
3. *Whether the offending member suffered or gain as a result of the breaches.*
4. *The impact of the breached on complainants or others.*
5. *The need for there to be specific deterrence to protect the public.*
6. *The need for there to be general deterrence to protect the public.*
7. *The need to maintain the public's confidence in the integrity of the professional.*
8. *The degree to which the breaches are regarded as being outside the range of acceptable conduct.*

9. *The range of sanction in similar cases.*

It was incumbent on the Lower Panel in rendering its decision on penalty in this matter to turn its mind to all of the above-noted factors. It failed to do so.

Not only did the Lower Panel fail to consider the factors required to be considered in determining the appropriate penalty in its Reasons for Decision as to penalty (September 19, 2011), it drew conclusions effectively making findings of fact that were inconsistent and in conflict with the findings of fact in its Reasons for Decision as they related to the Discipline Hearing.

Professional panels, and in particular, Discipline Panels of RECO must always be cognizant of the principal established in F.H. v. McDougall, 2008 SCC53 (CanLII), paragraph 44 when finding fact. The finding of fact is a binary determination. The Lower Panel had a responsibility to determine if the Respondent was a participant in the Property mortgage fraud, played some lesser role, for example as an accessory, or that the Respondent played an alternative role, namely that of someone who saw a fraud developing and should have taken steps to prevent it.

The Lower Panel in this case made all three findings. In the Reasons for Decision in the Discipline Hearing the Lower Panel concluded that the Respondent was a “willing and knowledgeable participant.” In the same paragraph the Lower Panel concluded that her role was someone who “should have recognized the fraud and should have taken steps to prevent it.” In the Reasons for Decision as to penalty the Lower Panel fashioned a new role for the Respondent, no longer a participant or observer, but rather that of an “accessory”. In that regard it erred in law, breaching its responsibility to make a binary finding. This erroneous three part finding may have had a mitigating effect on the Lower Panel’s decision as to penalty.

Based on the Record and the submissions of the Registrar this Panel accepts that notwithstanding some of the conflicting positions taken by the Lower Panel, the

Respondent was a willing and knowledgeable participant in the mortgage fraud perpetrated on the Financial Institution 1. This Panel accepts that she was not the driving force of the fraud but was a participant who not only knew the purpose and effect of her participation but also profited as a result of that willing and knowledgeable activity. It is on the basis of this finding, the finding of the Lower Panel, that the considerations set out in Jaswal must be applied. The Lower Panel failed to do so.

The Reasons for Decision as to penalty, given the seriousness of the matter before the Lower Panel, are perfunctory. More importantly they are deficient in that the Lower Panel did not turn its mind to three of the necessary considerations in fashioning a penalty. Specifically the Lower Panel makes no reference in its reasons to the need for there to be a specific and general deterrence to protect the public, and lastly the need to maintain the public's confidence in the integrity of the real estate profession. A review of the Lower Panel's Reasons for Decision indicates that the other necessary factors were addressed, although in language that this Panel finds to be inadequate.

Having concluded that the Respondent was a willing and knowledgeable participant in the mortgage fraud the Lower Panel had a responsibility to assess a penalty taking specific deterrence, general deterrence and the need to maintain the public's confidence in the real estate professional into account. It did not do so, notwithstanding that in its Reasons for Decision as to penalty it stated that "... the fraudulent behaviour (in this matter) is among the most serious types of unethical behaviour that can be engaged (in) by a registrant...".

This Panel was not persuaded by any of the Respondent's submissions, and in fact found them to be disingenuous. The Respondent argued that because the employees at the Financial Institution 1 should have detected the fraud and prevented it, that should somehow mitigate against the Respondent's penalty. In effect the Respondent in saying, yes I participated in a mortgage fraud, a fraud against mortgage lenders that succeeded in defrauding one of those lenders, the Financial Institution 2, of



\$373,075.00 but the damages it suffered were not my fault, they were caused by the lender's employees failure to detect the fraud. As a result I should not be penalized.

Secondly the Respondent's submissions as to the fact that she actually earned a profit as a result of her participation in the fraud are inconsistent with the reality that unfolded in this matter. The Respondent participated in a fraud. That fraud resulted in substantial losses to the lender involved. By her own admission the Respondent earned \$20,000.00. Even assuming that the Respondent had "costs" which diminished that gain, - an unsupported submission by the Respondent - it does not detract from the fact other members and the public would see a \$10,000.00 penalty as inappropriate in the face of a \$20,000.00 gain.

This Panel accepts the Respondent's submissions that she was not the moving force in this fraud. This submission is consistent with the findings of the Lower Panel. A review of the Reasons for Decision as to penalty indicates that in rendering its decision the Lower Panel considered her lesser role ("... she was not the mastermind...") and ("... there are various degrees and circumstances that can be taken into consideration when determining penalty.").

Section 21 (6) of the *Real Estate and Business Brokers Act, 2002* provides:

Power of the appeals committee

- (6) The appeals committee may by order overturn, affirm or modify the order of the discipline committee and may make an order under subsection (4). 2002, c.30, Sched. C, s.21 (6).

Subsection (4) of Section 21 provides that if a discipline committee determines that a registrant has failed to comply with the Code of Ethics it may amongst other things make an order requiring brokers or salespersons to take educational courses.

Section 21(6) of the Act vests authority in this Panel to modify the decision of the Lower Panel as to penalty.

This Panel finds that in determining penalty in this matter the Discipline Committee erred in law in not fashioning a penalty that took into account the need to impose a sanction that will deter the Respondent from repeating similar offences in the future. The penalty of \$10,000.00 although not rewarding the Respondent clearly is insufficient to obviously dissuade the Respondent from repeating her behaviour in this matter.

Similarly the Lower Panel erred in law in not imposing a penalty that took into account the need for there to be a general deterrence to protect the public from contemplating similar frauds by other members of the profession. The fundamental principal of general deterrence is that an unequivocal message be sent to the real estate industry to ensure that the penalties imposed by the Discipline Committee will act as a strong warning to members against engaging in similar behaviour. The fraudulent behaviour in this case was characterized as "... among the most serious types of unethical activity..." by the Lower Panel yet the penalty it imposed did not take the important consideration of general deterrence into account and as a result the Lower Panel committed an error in law that necessitates that this Panel modify the penalty.

Lastly, it is the strongly held position of this Panel that the Lower Panel's decision as to penalty would have the effect of eroding the public's confidence in the real estate profession. A penalty of \$10,000.00 in the face of serious unethical activity resulting in substantial losses to a mortgage lender while earning the Respondent a \$20,000.00 gain is clearly not a significant enough penalty given the gravity of the offence to maintain the public's confidence in the integrity of the real estate profession. In not taking this principal into account the Lower Panel erred in law requiring that the penalty be modified.

Taking all the above factors into account this Panel finds that the penalty of \$10,000.00 imposed by the Lower Panel was not reasonable, which was the standard of review the Lower Panel was obligated in law to apply. Given the undisputed role of the Respondent in this fraud, this Panel finds that taking the factors of specific and general

deterrence and the need to maintain public confidence in the real estate profession a penalty of \$18,000.00 would be more reasonable and appropriate.