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**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 -**

**MOHAMMED MUSTAFA ZIA (aka MUSTAFA ZIA)**

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**DISCIPLINE DECISION AND REASONS FOR DECISION**

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

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**FINDINGS:** In violation of Sections 4, 5, 17, 38, 39 and 2(1) in respect of section 16 of the *REBBA 2002* Code of Ethics.

**ORDER:** Fine of \$ 20,000.00 payable to RECO on or before June 30, 2022.

Successful completion of RECO's "MCE Compliance and Ethics in Real Estate, Parts 1 and 2 course", and provide RECO with confirmation of successful completion on or before May 15, 2022.

**WRITTEN REASONS:**

**REASONS FOR DECISION**

**INTRODUCTION**

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

The Agreed Statement of Facts and Penalty read:

## **AGREED STATEMENT OF FACTS AND PENALTY**

It is agreed as follows:

1. At all material times, Zia was a salesperson employed with Brokerage A.
2. On or about March 12, 2017, Zia was contacted by the Sellers. The Sellers were the owners of a property located at 1 A street, City A (the "**Property**").
3. The Sellers contacted Zia in response to a door flyer advertisement left at the Property.
4. At the time, the Property had been vacant for around 7 years.
5. Zia met with the Sellers at the Property on the evening of March 12, 2017. At that time, the Sellers signed a listing agreement for the Property. On the recommendation of Zia, the listing price set out in the listing agreement was \$1,200,000.
6. The listing agreement was exclusive (for a period of five (5) months) on the recommendation of Zia. Zia did not adequately explain to the Sellers the meaning and impact of entering into an exclusive listing agreement.
7. On March 17, 2017, Zia attended at the Sellers' home to present them with an offer for the Property.
8. The offer was for \$1,125,000 and was from a buyer listed as Buyer A.
9. Zia was the sole director and officer of Buyer A and was a shareholder in the corporation.
10. Zia did not disclose to the Sellers that Buyer A, the proposed buyer, was a company in which he held a role and a financial interest.
11. Buyer A was represented by Representative A, a registered salesperson who was also employed with Brokerage A.

12. At the time of presenting the offer, Zia had not sought or obtained consent from the Sellers for multiple representation by Brokerage A in relation to this transaction.
13. The Sellers turned down the offer.
14. On March 19, 2017, Zia attended at the Sellers' home again to present an increased offer from Buyer A in the amount of \$1,300,000.
15. Zia advised the Sellers that the offer he was presenting was a very good offer and encouraged the Sellers to accept the offer.
16. This offer was accepted by the Sellers without Zia clearly disclosing to or advising the Sellers that the proposed buyer was a company in which he had a role and financial interest.
17. In conjunction with executing with Agreement of Purchase and Sale to accept the offer, Zia provided the Sellers the following documents for execution, which the Sellers signed:
- a) Registrant's Disclosure of Interest, which stated:  
  
*"Please be advised that, if the proposed Offer is accepted, I will be either directly or indirectly acquiring an interest in your Property. [...] EXPLANATION: RREA is the director of the corporation purchasing the property."*
  - b) Confirmation of Co-operation and Representation, stating that the buyer was being represented by the same brokerage as the Sellers
18. The Sellers subsequently retained a lawyer to assist them in completing the sale of the Property.
19. Through their lawyer, the Sellers learned for the first time about Zia's connection with Buyer A.

20. After their lawyer raised concerns about the circumstances of the sale of the Property and the conduct of Zia, a mutual release was entered into cancelling the transaction.

### **SUMMARY OF AGREEMENTS**

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

- A. In encouraging the Sellers to enter into an exclusive listing agreement without adequately explaining the meaning and implications of such a decision, contrary to sections 4, 5, and 38.
- B. In failing to clearly disclose his interest or role in the buyer of the Property, contrary to sections 4, 38, and 39.
- C. In failing to obtain timely consent for he and his brokerage to represent or provide services to more than one buyer or seller in respect of the sale of the Property, contrary to sections 4, 17, 38 and section 2(1) in respect of section 16.

**It is agreed that Zia failed to comply with the following sections of the Code of Ethics:**

#### Broker and salesperson.

2. (1) A broker or salesperson shall not do or omit to do anything that causes the brokerage that employs the broker or salesperson to contravene this Regulation.

#### 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.

#### Disclosure before multiple representation

16. A brokerage shall not represent more than one client in respect of the same trade in real estate unless it has disclosed the following matters to the clients or prospective clients at the earliest practicable opportunity:

1. The fact that the brokerage proposes to represent more than one client in respect of the same trade.
2. The differences between the obligations the brokerage would have if it represented only one client in respect of the trade and the obligations the brokerage would have if it represented more than one client in respect of the trade, including any differences relating to the disclosure of information or the services that the brokerage would provide.

#### Nature of relationships

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

#### Error, misrepresentation, fraud, etc.

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

#### Unprofessional conduct, etc.

39. A registrant shall not, in the course of trading in real estate, engage in any act or omission that, having regard to all of the circumstances, would

reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming a registrant.

#### AGREED PENALTY

MOHAMMED MUSTAFA ZIA (aka MUSTAFA ZIA), the Respondent, be ordered to:

- a) pay a fine of \$20,000.00 on or before June 30, 2022; and
- b) successfully complete the RECO MCE Compliance and Ethics in Real Estate course (Parts 1 and 2) by May 15, 2022.

By initials below, I, MOHAMMED MUSTAFA ZIA (aka MUSTAFA ZIA), acknowledge that I have read and understand the penalty outlined herein and agree to the said terms and/or conditions.

*[Respondent's Initials]*

By initials below, I, MOHAMMED MUSTAFA ZIA (aka MUSTAFA ZIA), agree, understand, acknowledge and consent to waive the requirement for a hearing and to request an Order from the Chair of the Discipline Committee that includes this Agreed Statement of Facts and Penalty as a final settlement of this matter.

*[Respondent's Initials]*

By initials below, I, MOHAMMED MUSTAFA ZIA (aka MUSTAFA ZIA), acknowledge that I exercised my right to be represented by Counsel or agent in this matter.

*[Respondent's Initials]*

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

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

### **DECISION OF THE CHAIR**

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee (*REBBA 2002*) concluded that the Respondent breached Sections 4, 5, 17, 38, 39 and 2(1) in respect of section 16 of the *REBBA 2002* Code of Ethics. The Chair of the Discipline Committee (*REBBA 2002*) is also in agreement with the joint submission of the Parties as to penalty and accordingly makes the following order:

1. MOHAMMED MUSTAFA ZIA (aka MUSTAFA ZIA) is Ordered a Fine of \$20,000.00 payable to RECO on or before June 30, 2022.
2. MOHAMMED MUSTAFA ZIA (aka MUSTAFA ZIA) is Ordered to successfully complete RECO's MCE Compliance and Ethics in Real Estate course, Parts 1 and 2, on or before May 15, 2022.

*[Released: February 23, 2022]*