



ETHICALLY SPEAKING



...living the Code of Ethics at NOMAR

1st Quarter 2009

Welcome to our first publication of what, hopefully, will be quarterly reports on ethics complaints filed at NOMAR. Attached you will find the *Ethics Activity Report* for 2008, which lists all of the complaints that were filed last year. In *Ethically Speaking* we will publish the “findings of fact” for those complaints that made it to a Hearing, as not all complaints get that far. Two complaints that were filed in 2008 resulted in Hearings. An additional complaint is being held in abeyance, waiting for the conclusion of a civil law suit. The “findings of fact” on the first one follows. Agent and company names have been changed.

We hope that you will use this information for discussions at your office meetings and for education on the *Code of Ethics* and the ethical conduct that is required of REALTORS®.

Nell Carmichael
Professional Standards Administrator

Decision of Ethics Hearing Panel of the Professional Standards Committee

Broker/ABC Realty vs. Respondent A & X/XYZ Realty

Findings of Fact: The basis for our decision is the conclusion of the Hearing Panel as to the following facts:

This case arises out of the following circumstances, alleging a violation of Article 1 (failing to treat all parties honestly) and Article 16 (engaging in conduct inconsistent with the exclusive representation of another broker) by two REALTORS®.

A seller had his home listed for sale. Respondent A, while an agent for the complainant, ABC Realty, showed the property three times to the buyers who elected at that time not to write an offer.

Later Respondent A terminated her association with ABC Realty which resulted in her license being “in limbo” for approximately five days during which time she could not engage in the real estate business.

Immediately following her termination with ABC Realty, the seller’s property was again put on the market, at a lesser price. Apparently, the buyers received an “alert” as to the new price and contacted Respondent A relative to putting in an offer to purchase.

On being contacted, Respondent A informed the buyers of her status and advised that she could not write the offer. Respondent A testified that she had advised the buyers that they had two options. First, they could contact ABC Realty and have someone there write the offer or they could contact her new broker at XYZ Realty and have someone there write the offer.

The buyers contacted Respondent X, manager of XYZ Realty, who submitted their offer on the property. Respondent A assisted in the preparation and typing of the offer. The sale closed late in January 2008.

The complaint was against Respondent A and Respondent X, manager of XYZ Realty.

Respondent X stated that she did receive a call from the buyers asking that she write an offer on the property. The buyers stated that they were familiar with the property and refused a request to view the property with Respondent X, as time was important and they were out of town. The offer was delivered to the seller and, after certain negotiations and a counter offer, an agreement was reached by the parties and the property went to sale.

Respondent A testified and stated that she understood that she could not engage in the real estate business during the period that her license was in transition to XYZ Realty.

The Panel carefully considered all of the testimony, the correspondence, and the evidence submitted on these issues and found that there was no violation of Article 1 or of Article 16 on the part of either respondents. Violations must be established by clear and convincing evidence and the facts must establish a violation of one of the *Articles of the Code of Ethics* (and not LREC Rules & Regulations).

The thrust of Article 1 is to address the duties and responsibilities of REALTORS® to their clients and customers. There is no testimony that either the seller or the buyers were treated dishonestly, nor is there evidence that Respondent X failed to protect the interests of the client. [Procuring cause issues which may have surfaced during this hearing, whether they exist or not, are separate and apart from this ethics Hearing.]

Article 16 prohibits REALTORS® from engaging in a course of conduct that is inconsistent with the “exclusive representation” of another REALTOR®. Because ABC Realty did not have an “exclusive representation” agreement with the *buyers*, within the meaning of Article 16 there can be no violation by either respondent.

For the above and foregoing reasons, the complaint against both respondents was dismissed.