



ETHICALLY SPEAKING



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3rd Quarter 2009

So far this year there have been 11 ethics complaints filed. One was past the 180 day filing deadline and dismissed, one is awaiting a Grievance Committee review, one was withdrawn prior to the Hearing, three are scheduled for Hearings, three were determined to have committed no violation, and two were found to be in violation. One of these violations was a very serious matter and resulted in the member being expelled.

Nell Carmichael
Professional Standards Administrator

(link to 2009 Code of Ethics <http://www.nomar.org/Ethics/2009%20Code%20of%20Ethics.pdf>)

Decision of Ethics Hearing Panel of the Professional Standards Committee

The respondent, REALTOR A, is charged with a violation of Article 1 of the *Code of Ethics* of the National Association of REALTORS® for failure to protect the interests of his client and for failure to treat all parties honestly, and with a violation of Article 8 for his failure to place a deposit in a special account, separate from his own funds.

The complainant is Broker B, his former broker, who is now responsible for the missing deposit.

The facts show that the respondent acted as a dual agent and received a cash deposit of \$6,800.00 for a pending sale at 123 Main St. The respondent did not turn the deposit in to his broker, rather he converted it to his own use because he was “short of funds” for his personal debts.

Broker B, upon discovering the actions of REALTOR A, confronted him and then REALTOR A admitted that he had kept the deposit and spent it.

REALTOR A admits that he “screwed up”, but declared that he never intended to defraud anyone. He hoped and anticipated that the sale would close and he would pay the deposit from funds that he would earn on the transaction. However, the transaction has not closed. It has fallen through at least four times. The deposit was taken in the summer of 2008 and remains unpaid to the date of this hearing, June 22, 2009-more than a year.

Furthermore, the respondent, while acting in a dual agency capacity, failed to have the dual agency notice signed. His action in converting his client’s deposit amounts to a failure to protect their interests, a failure to treat them honestly, and a failure of Article 8 to properly deposit the funds.

The Panel finds that the above facts have been clear, strong, and convincingly established.

Moreover, the Panel finds that the violation of Article 8 involves a violation of the “public trust” as defined by the *Code of Ethics & Arbitration Manual*, Part I, Section 1 (r). That being so, the Panel further recommends that, upon this decision becoming final, it be forwarded to the Louisiana Real Estate Commission as provided for in Part 4, Section 23 (j) of the *Code of Ethics & Arbitration Manual*.

Although REALTOR A seeks to explain his actions under his belief that this sale would ultimately close, there is no justification for his actions. Many cases of misappropriation of funds and comingling, begin, in the mind of the perpetrator, with the belief that the funds would be repaid.

The Panel finds that the violation here is an extremely serious violation of the REALTOR’s duty - trust, honesty, and integrity. This violation requires dismissal and expulsion of REALTOR A as a member of this organization.

II. Conclusions of the Hearing Panel: We, the members of the Hearing Panel in the above- stated case, find the Respondent in violation of Articles 1 and 8 of the Code of Ethics.

III. Recommendation for Disciplinary Action: We recommend to the Board of Directors the following action:

1. REALTOR A is fined \$2,500.00.
2. REALTOR A is expelled as a member of the New Orleans Metropolitan Association of REALTORS® for a period of 18 months from the date that this decision becomes final as reviewed by the Board of Directors.
3. In the event REALTOR A makes application for reinstatement after his period of expulsion, he will be required to first establish, as part of his reinstatement application, the following:
 - a. that he has paid the above fine of \$2,500.00 in full
 - b. that he has enrolled and successfully completed the following 4 hour educational courses:
 1. The Law of Agency
 2. Quadrennial Ethics
 3. Contracts
 4. LREC Rules & Regulations

We also seem to be getting a lot of calls re Article 16:

“REALTORS® shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with clients.” (Read the Standards of Practice for clarification.)

Here is a complaint where the respondent was found “not in violation”.

Decision of Ethics Hearing Panel of the Professional Standards Committee

The respondent is alleged to have violated Articles 1 and 16 because of the following conduct.

The respondent listed the property and received an offer from the complainant representing a prospective purchaser (Purchaser 1). The offer was not accepted and Purchaser 1 did not wish to counter, as he had in mind paying only a limited amount-and nothing more.

Almost immediately thereafter the respondent received a second offer from another potential purchaser (Purchaser 2), who was the daughter of Purchaser 1.

Purchaser 2 could not financially qualify and then requested that the seller allow her father (Purchaser 1) to take the property in his name. Respondent, upon being given the name of the father recognized him as the client of the complainant and called. A discussion ensued relevant to commissions and REALTOR/client relationships. Respondent testified that she encouraged Purchaser 1 to return to the complainant.

Thereafter, the complainant attempted to contact Purchaser 1 and was delayed and “put off”. Shortly thereafter, the complainant spoke with Purchaser 1 who then advised that he had purchased the property through the respondent. Purchaser 1, as well as his daughter, Purchaser 2, stated in a letter that they wished to deal through the respondent and not the complainant.

This is not an arbitration hearing and procuring cause is not an issue. What is at issue is whether or not the respondent treated the complainant dishonestly under Article 1 or took actions inconsistent with the exclusive relationship of the complainant under Article 16.

After careful consideration of the entire circumstances, the Panel finds no violation of either Article 1 or Article 16. First, the evidence demonstrates that this purchaser wanted to obtain the property at a price agreeable to him and likely decided it could be obtained for that price through the respondent. Secondly, it appears that Purchaser 1 purposely avoided dealing with the complainant-for whatever reason. Thirdly, Purchaser 1 contacted the respondent. The respondent did not contact him. Fourthly, the respondent, upon learning of the potential conflict, so advised the complainant. Finally, the respondent testified that Purchaser 1 told the respondent he did not care to work with the complainant and apparently did not.

Under these circumstances, while there may be issues of procuring cause which, as heretofore stated, is not an issue, there is no violation of Article 16 as the contact of respondent was made by Purchaser 1, thus the “dealings were initiated by the client”. Respondent had very limited options in representing her seller other than to disclose the dilemma to the complainant which was done. The panel also notes that the respondent did not notify the complainant that the sale had closed. This would have been a better course of action.

Similarly, there is no dishonest dealing which occurred under Article 1. Obviously, the complainant is justifiably disappointed in the conduct of the purchaser. But here, in these circumstances, the respondent did not treat the complainant dishonestly.

Accordingly, the complaint alleging a violation of Articles 1 and 16 against the respondent is dismissed.