



ETHICALLY SPEAKING



...living the Code of Ethics at NOMAR

2nd Quarter 2010

The total number of ethics complaints filed in 2009 was 11. This is slightly lower than the average of 13 filings. Requests for arbitration numbered 7 last year, slightly more than the average of 5.

Of the ethics complaints filed: 1 was withdrawn, 1 was past the 180 day filing limit and dismissed, and 7 were found “not in violation”. The remaining 2 complaints resulted in the respondents being found in violation of Articles 1, 2, and 8. Discipline ranged from a Letter of Reprimand, CE, and \$250 fine to a \$2,500 fine and expulsion.

So far this year, 5 ethics complaints have been filed and 2 requests for arbitration.

Nell Carmichael
Professional Standards Administrator

(link to 2010 Code of Ethics <http://www.nomar.org/Ethics/2010%20Code%20of%20Ethics.pdf>)

Decision of Ethics Hearing Panel of the Professional Standards Committee

The respondent, REALTOR A, took a listing of a property located in the lower 9th Ward which had been severely damaged by Hurricane Katrina. His clients were out of town and all documents were transferred by mail and/or email.

REALTOR A listed the property as having dimensions of 120' x 180'. He published these dimensions in the MLS.

He received the title which was a judgment of possession which recognized his clients as owners of the property, but as having dimensions of 39' 11" x 111', and not 120' x 180'. REALTOR A reviewed the documents to verify that his clients were the owners of the property, but failed to review the documents to ascertain the correct dimensions. Later REALTOR A went to the property for the purpose of taking measurements. It developed that he was concerned for his safety and left the property without taking accurate measurements. Upon returning to his office it apparently did not occur to him to check the title for the correct dimensions.

In the respondent's emails with his clients they state that they own the house, “and the adjacent lot”. Later, as a result of having his sign on the “adjacent lot”, he received a call from a Ms. Jones wanting to know why the sign was on her property. Still the respondent failed to check the title for the stated dimensions. Furthermore, the respondent did not seek the advice and consultation of his broker nor did he alert the complainant or call the title company. The respondent stated that he was going to simply let the title

company solve the dilemma. The facts also reveal that the respondent received the title 19 days before the scheduled closing. Therefore, the actions of REALTOR A left the complainant and her clients to spend more than two weeks attending to matters pertaining to taking the title at the closing. The complainant and her clients learned for the first time the inaccuracy of the property dimensions while attending the aborted closing.

The complainant contends that under the circumstances the respondent violated Article 2 by concealing pertinent facts relating to the property. The Panel agrees and finds that REALTOR A violated Article 2 by not checking the title originally when he had ample opportunity and *duty* to do so, and specifically by not checking the title after the adverse claim of Ms. Jones arose. His assumptions that the fenced area represented the dimensions of the property were misplaced. His silence on the subject (dimensions), when he had the title and the opportunity to reveal the correct information, amounts to a “concealment” of pertained facts.

II. Conclusions of the Hearing Panel: We, the members of the Hearing Panel in the above- stated case, find the Respondent **in violation of Article 2** of the Code of Ethics.

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

1. A “*Letter of Reprimand*” to be place in his file.
2. Attendance at and successful completion of 2 hours of “Contract Writing” and a four hour class in “The Code of Ethics”. Said courses must be completed and proof thereof furnished to the Board no later than August 11, 2010.
3. Respondent is likewise assessed a fine of \$250.00. Said fine of \$250.00 shall be waived if the above courses are timely completed and proof furnished to the Board. Failing to complete the course or to provide proof in the time required shall result in the fine of \$250.00 becoming due and payable on August 12, 2010.

Here’s another complaint 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.)

This respondent was found “not in violation”.

Decision of Ethics Hearing Panel of the Professional Standards Committee

Complainant, REALTOR A, alleges that REALTOR B violated Article 16 by interfering with his relationship with purchasers, Mr. & Mrs. Smith, and with the seller, Mr. Jones, of a property on Main Street. He also feels that REALTOR B violated Article 15 by making false and reckless statements about him.

The facts show that REALTOR A had an exclusive agency agreement on a property located on Main Street. During the existence of this listing the individual owner met with, and showed his property to Mr. & Ms. Smith. After some negotiations between the Smiths and the owner they reached an agreement and REALTOR A was asked to contact the Smiths relative to executing an agreement to purchase. REALTOR

A and the Smiths met. REALTOR A advised the Smiths that they could write the agreement to purchase through him, or if they chose they could have another agent write the agreement. The Smiths elected to have REALTOR A to write the agreement which he did.

The problems that exist here, in part, relate to the fact that REALTOR B represented the Smiths under an agreement to purchase another property. This agreement was cancelled by the Smiths because they wished to pursue purchasing the Main Street property which they had just seen.

REALTOR A feels that during the time he was representing Mr. & Mrs. Smith, having written the offer to purchase the Main Street property, that REALTOR B interfered in his relationship by contacting the Smiths as well as engaging in several conversations with Mr. Jones, the owner of the Main Street property, and stating derogatory comments about him. There is evidence to show that one or more meetings occurred between REALTOR B's broker, the owner, and others relating to whether or not a commission split would be shared between REALTOR A and REALTOR B. It was at one of these meetings that remarks that were attributed to REALTOR B were said to have occurred. The derogatory comments were to the effect that he, REALTOR A, "had done this type of thing before".

REALTOR B denied meeting with the Smiths, attempting to influence them, or making the false or reckless statements that were said to be attributable to REALTOR A. Further evidence reveals that REALTOR B personally elected to sever her relationship with the Smiths when she felt that Mrs. Smith had used her and had purposely cancelled the first purchase agreement. REALTOR B felt that Mrs. Smith was not forthright with her while Mrs. Smith independently negotiated with the owner for the purchase of Main Street, all without her knowledge.

Also, REALTOR B, in her defense, alleges that REALTOR A's complaint was filed untimely being more than 180 days from the closing of the transaction or when the facts supporting the violation could have been reasonably known by him. REALTOR A testified that he was not aware of REALTOR B's alleged meeting with the Smiths until May of 2009 when he received a complaint filed against him at the LREC. REALTOR A filed his complaint on August 21, 2009. Under the existing circumstances the complaint filed by REALTOR A would be considered as timely filed.

The panel however, in considering the merits of REALTOR A's complaint, concludes as follows. There is no violation under Article 15 as any remarks which were false, reckless, or derogatory can not be attributable to REALTOR B. Some speculation may exist. However, under the precise requirement of the Code of Ethics and Arbitration Manual a violation must be proven by "clear and convincing evidence" that such statement had been made and attributable to REALTOR B. Finding that no such evidence exists, the complaint under Article 15 is dismissed.

The panel also considered and does now dismiss the alleged violation of Article 16. There is scant evidence of any meeting or conversations between Mrs. Smith and REALTOR B, and the meeting(s) between her broker and the owner, resulted from a misunderstanding of the exclusive agency status which existed. If any contact did exist there is no evidence to prove that it was initiated by REALTOR B, or that there was any attempt on REALTOR B's part to interfere with REALTOR A's relationships. If such interference occurred it was by others, not the respondent, REALTOR B.

Consequently, this complaint is dismissed.