

Agent's Failure to Co-operate with Investigation



By Brian Madigan LL.B.

You might think that if an agent received a letter of complaint against him from his governing body that he might be inclined to respond. After all, they have the ability to revoke his licence and put him out of business.

Well, sometimes it's just easier to ignore these things and hope they will simply go away.

In this particular case, a client filed a complaint with the Real Estate Council of Ontario concerning the representation she received from her agent.

The Real Estate Council of Ontario (RECO) made a determination that the agent may have failed to properly explain the concept of "agency", and may not have had the document "Working with a Realtor" signed. So, RECO requested a copy.

Some Facts

- 5 February 2006 complaint filed
- 8 March 2006 RECO notifies agent
- 28 March 2006, agent files response
- 28 March 2006, client files withdrawal of complaint with RECO
- 4 July 2006 agent advised RECO is proceeding with investigation
- 4 July 2006 RECO requires response by 26 July 2006
- 26 July 2006, no response received

In fact, the agent never complied with RECO's request, or ever filed a proper response. As things go, this particular case simply found its way through the system and to a Discipline hearing before a Panel on 18 September 2008. Now, two months before the hearing, the agent figured that this complaint was not just going to go away.

As a result, almost two years after the deadline, the agent offered the following excuses for his tardiness:

- 1) the agent was a new registrant, at the time,
- 2) the manager had agreed to respond, on his behalf,
- 3) the manager had a serious medical problem, at that time,
- 4) there were changes in management and the response was misplaced or overlooked, and
- 5) the dog ate the response.

Actually, those statements were offered to RECO as an “excuse” to exculpate the agent from his obligations under the Real Estate and Business Brokers Act, 2002. Yes, I just made up number five. But, you have to admit, it’s just as believable as any of the others.

This is clearly a case of shifting blame, and not accepting responsibility for one’s own actions.

Allegations of Misconduct

RECO alleged that the agent acted unprofessionally by:

- a) Failing to cooperate with the Council in fulfilling its duty to serve and protect the public interest, and
- b) Failing to cooperate fully with any representative of the Council carrying on the Council’s regulatory function through investigation of a matter.

Findings of Unethical and Unprofessional Conduct

The agent was found responsible under the following Rules of the RECO Code of Ethics:

Rule 1 Ethical Behaviour

A Member shall:

- 6) cooperate with the Council in fulfilling its duty to serve and protect the public interest;

7) comply with the Real Estate and Business Brokers Act and the regulations under it and the by-laws of the Council.

Rule 30 – Cooperation with the Council

A Member shall cooperate fully with any representative of the Council carrying on the Council's regulatory functions and duties including investigations and discipline. A Member shall give due consideration to the member's duty of confidentiality in a Member's responses to any such representative of the Council.

The Discipline Committee assessed a fine of \$2,000 against the agent.

COMMENT:

This case is somewhat bizarre. Had the complaint not been well-founded in the first place, it never would have been pursued by RECO. If there were a justifiable reason at the outset, this information should have been volunteered to RECO. You can see from the timelines that the agent's first response was to "weasel" out of this problem. Coerce the client to withdraw her complaint. Promise her something, persuade her in some way not to proceed. This is not how a legal system works. If this was a criminal case it would be "witness tampering". Just let the facts fall where they may.

The next tactic, was to say that it was the manager's fault. At the time of this offence, there was no requirement for a broker of record. That provision became effective on 31 March 2006. Many brokerages had confusing lines of responsibility. The attempt to take advantage of that is foolhardy. Here, you could just find someone who was ill and blame it all on them. Thereafter, as management changes were made, you could blame them too.

This approach will not really work. The failure to co-operate is what sank this agent. The initial item that RECO was looking for, namely, the signed "Working with a Realtor" document was never mentioned in the reasons.

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