

Air Conditioners For Everyone!



By Brian Madigan LL.B.

Free air-conditioners all at the realtor's expense. And, you might wonder why?

It's very simple. The agent said central air was included. Only one little problem, the property never had central air. So, the solution seems straightforward: the agent should pay for the air conditioning system.

But, the agent was somewhat reluctant, so the matter became the subject of a complaint against the agent, and the brokerage. That meant that the issue had to be resolved by the Discipline Committee of the Real Estate Council of Ontario (RECO) which regulates and supervises the conduct of sales representatives, brokers, and brokerages in Ontario. A \$2,000 fine was assessed as against both the agent and the broker; that's \$4,000, and the agent had already paid \$1,000 for the new air condition system. So, basically, that's 5 air conditioners. Why not just comply? Why fight? Pay up and generate some goodwill. Just pay once!

Well, really, human nature being what it is, people often don't like to admit their mistakes.

Facts

Here's what happened:

- The agent took the listing and checked off central air
- The MLS system showed central air included
- The Offer stated "central air" as a chattel to be included as part of the purchase price
- When the deal was closed, the purchaser discovered that there was no central air
- The purchaser complained
- The broker failed to take responsibility and blamed the agent
- The agent arranged for the vendor to contribute to the cost
- Central air was installed at the expense of the agent and the vendor

Allegations of Unprofessional Conduct

RECO takes the position that the agent acted unprofessionally when he:

- Failed to verify that there was indeed a central air conditioning unit in place before advertising that the Property had a central air conditioner,
- Placed a false and misleading advertisement on the Real Estate Board MLS system regarding the air conditioning system,
- Failed to protect the seller clients from potential litigation and/or additional expense by executing the Agreement of Purchase and Sale to include the air conditioner.
- Failed to treat the buyer and her representative fairly by leading the buyer and her representative to believe that the central air conditioning was a part of the transaction.

In conclusion, the Discipline Committee found that the following breaches of professional ethics had occurred:

Rule 1 – Ethical Behaviour –

A Member shall:

(2) endeavour to protect the public against fraud, misrepresentation or unethical practice in connection with real estate Transactions,

(5) deal fairly, honestly and with integrity with the public, other Members and third Parties.

Rule 2 – Primary Duty to Client:

A Member shall endeavour to protect and promote the best interests of the Member's Client. This primary obligation does not relieve the Member of the responsibility of dealing fairly, honestly and with integrity with others involved in each transaction.

Rule 11 – Discovery of Facts:

A Member shall discover and verify the pertinent facts relating to the Property and the Transaction relevant to the Member's Client that a reasonably prudent Member would discover in order to fulfill the obligation to avoid error, misrepresentation or concealment of pertinent facts.

Rule 21 – Advertising:

A Member shall ensure that all advertising and promotion by or on behalf of the Member, including for Properties and Services, is not false, misleading or deceptive.

Rule 43 – Broker Responsibility

A broker shall be responsible for the professional conduct and professional actions of those Members registered with that broker.

COMMENT:

The broker was responsible for advertising and supervision. You might think that a broker would undertake some spot audits to ensure that every agent fulfilled their responsibilities.

This seems clear. Either there was or there was not, central air. This information needs to be verified. It doesn't matter if it's cold and windy, the easiest route is to go out and check.

What if it's broken, and it's the middle of winter? Be careful!

If a problem arises, then deal with it. In this case everyone wanted to pass the buck. Had the matter been quickly resolved, the purchaser would not have complained to RECO. Instead, everyone would have said what a great guy, the listing agent was.

But now, the agent had to pay an additional \$4,000, basically the cost of four additional systems. Here, I'm assuming that the broker's fine will be back-charged to the agent. The delay and lack of commitment from the vendor just wasn't worth it.

So, if you are an agent in this mess: pay for it up front once, and worry about partial reimbursement from your client later.

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