

Let's Monkey with Your Deal!



By Brian Madigan LL.B.

That doesn't seem to be very nice. Why would an agent want to do that?

Easy! Self-interest, otherwise, they wouldn't be bothered.

So, here's what happened. Bob Jones a real estate agent spoke to Mr. and Mrs. Smith who were selling their residence through another agent and brokerage. Things were not going that well. They had reduced the price and they still weren't getting the action that they thought they should.

The listing agreement was to expire on the 15th of June. However, on the 5th of June, Bob met the owners at their residence for the purpose talking further about the sale of their property. Previously, he had met with them for the purpose of providing a "comparative market analysis". That's 10 days too early, by all accounts.

Relevant facts

- The property was listed with Albert at ABC Realty at \$279,000
- The price was reduced to \$260,000
- Bob works for XYZ Real Estate
- Bob prepared a Cancellation of Listing Agreement
- Bob presented it for signature to the sellers on 5 June
- Bob said that the sellers could unilaterally cancel the contract
- Bob offered to personally deliver the Cancellation to the listing agent, Albert
- The Cancellation had the wrong date, and incorrectly named XYZ Real Estate (Bob's company)
- Bob spoke to the Sellers about listing the Property with him
- Bob said "that the Sellers would have to wait for the Cancellation to be processed"
- Bob said "in the meantime, we could get the listing signed and within a day we could have it on MLS"

- the Sellers signed a second listing with Bob
- This listing purported to give XYZ the exclusive right to list the Property, notwithstanding that ABC already had this right
- The term of agreement was from June 5 until September 5 (3 months)
- The offering price was \$244,900.00
- On June 5, 2006 Bob phoned Albert indicating he had listed the Property and informing him for the first time about the Cancellation Agreement and his dealings with the Sellers
- Bob then delivered a copy of the Cancellation ABC Real Estate. (naturally, it said XYZ)
- Bob then presented the Sellers with an “amended” Cancellation Agreement, this time, naming Brokerage ABC
- the Sellers signed and which Bob then faxed a copy to ABC Real Estate
- As of June 6, the Property was listed on MLS in the name of XYZ as well as ABC
- On June 7, Bob left a message with Albert indicating that he was going to the Property and offering to return ABC’s “for sale” sign and lockbox
- Neither Brokerage negotiated a sale of the Property
- The second listing agreement in the name of XYZ was later cancelled

Allegations of Misconduct

The Real Estate Council of Ontario (RECO) alleges that Bob acted unprofessionally, in particular:

- a) Communicated directly and provided information to the Sellers in connection with a trade in real estate, including with respect to the Seller’s listing of the Property, when the Sellers were the clients and under agreement with ABC brokerage without the consent of ABC.
- b) Drafted the Cancellation Agreement, intended to apply to ABC’s listing, presented it to the Sellers to sign and then provided it to ABC without the knowledge or consent of ABC.

c) Indicated expressly or implicitly to the Sellers that the Cancellation Agreement would be accepted by ABC and asked that the Sellers, without having yet obtained the acceptance by Brokerage ABC to the Cancellation Agreement, enter into a new seller representation agreement making him the listing representative.

Findings of the Discipline Committee

Bob was found responsible under the following sections of the Code of Ethics:

Fairness, honesty, etc.

3. A registrant shall treat everyone the registrant deals with in the course of a trade in real estate fairly, honestly and with integrity.

Providing opinions, etc.

6(1) A registrant shall demonstrate reasonable knowledge, skill, judgment and competence in providing opinions, advice or information to any person in respect of a trade in real estate.

Dealing with other registrants

7(1) A registrant who knows or ought to know that a person is a client of another registrant shall communicate information to the person for the purpose of a trade in real estate only through the other registrant, unless the other registrant has consent in writing.

(2) If a broker or salesperson knows or ought to know that a buyer or seller is a party to an agreement in connection with a trade in real estate with a brokerage other than the brokerage that employs the broker or salesperson, the broker or salesperson shall not induce the buyer or seller to break the agreement.

Bob was ordered to pay a \$10,000 fine and successfully complete the Real Property law course.

It might also be worth mentioning that Bob wasn't present for his hearing. On the first date, he called in to say that he had car trouble. The people at RECO are actually quite "nice". They tried to contact him by telephone immediately, and eventually just adjourned the case, so that Bob could attend next time. They knew that this was a very serious matter.

Later, of course, they sent him numerous notices by registered mail etc. advising him of the new date. Again, he didn't show up, nor were they able to reach him by telephone on the date of the adjourned proceeding.

So, they got the “hint”, Bob wasn’t going to show up no matter what. Were they influenced in some way by Bob’s apparent car trouble? Do you think he really had car trouble? If he were prepared to “deceive” somebody about that, would he be prepared to “lie” to someone else at some other time? Maybe! Particularly, if it were to his benefit.

COMMENT

This does seem to be a crazy situation. Why would anyone do this? Certainly, if you had a friend like Bob, you wouldn’t need any enemies.

The average reader should know that a “deal is a deal”. If you sign a contract, then you are bound by it. For some reason, that didn’t cross Bob’s mind. Isn’t he just the person you’d like to have negotiating contracts on your behalf? How can he not know these basic principles?

He was supposed to have read and understood the Code of Ethics. He seemed to have no appreciation whatsoever.

He induced the sellers to breach their contract. Actually, that’s a criminal offence, aside and apart from the fact that it’s an actionable wrong in tort law and leaves him liable to a civil lawsuit and a breach of professional ethics, which he found out in this case.

Actually, all his “advice” was wrong. That’s because he didn’t know what he was doing.

Once he starts answering his phone again, who’s going to call?

Now, my point is really this: A \$10,000 fine and a law course is not enough. This fellow can’t be let loose on the public. He doesn’t understand the basic elements of contract law, he’s deceptive, and he’s incompetent. All the signs are there. So, why the lenient approach?

The proper role of RECO is to act for and protect the public. Bob’s next case is going to be another mess. You know that, and I know that, so why would Bob be let loose on the public?

In my view, Bob should have had his licence suspended and been required to complete the pre-registration courses once again. And, what about his “evasiveness”? Can he simply “not show up”, and that matter is overlooked? In the very best light, Bob is completely incompetent.

As a rule, I use fictitious names. The actual case is published on RECO's website and is available to the public. For educational purposes, the names of the parties really don't have any bearing. If you need to quote the case, you will have to obtain the proper legal citation.

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