

Phantom Offer ~ Agent Penalty: \$10,000 Fine



By Brian Madigan LL.B.

If you are an agent: don't lie! Don't get your friends and colleagues to lie!

The corollary of that proposition is rather clear: just tell the truth! It's fairly simple and straightforward.

Mr. Jones had a listing and naturally he wanted it to sell for the highest price. Now, we all know that if two people are interested in the same property at the same time, then, these two people might bid up the price.

Mr. Jones, the agent, knew that too. So, he simply decided to tell the other agent that there was a competing offer. The only problem with that, was that it was simply not true. He just made it up. He did this because he associates with other agents who do the same thing. To be perfectly frank, from reading the transcripts Mr. Jones did not appear to be smart enough to come up with this one on his own.

The other agent got a little suspicious and asked Mr. Jones' broker to look into this. Just where was this phantom offer? At first, Mr. Jones explained that he had simply ripped it up and destroyed it and it was not accepted. But, then he found out that such an act would come back to haunt him. So, he found it! He used a relative as the purchaser and persuaded a colleague to witness the relative's signature. The only little problem here, was that the relative was unaware of the Offer, and naturally was not present when this false document was shown to his colleague.

It's rather circumspect to wonder whether the colleague was complicit in the deception or just naïve.

So here were the actual **allegations** before the Discipline Committee of RECO:

"22. Mr. Jones acted unprofessionally as follows:

a) Provided false information and prepared and furnished false documents, including:

(i) Represented that the Competing Offer had been made or registered by Registrant D on October 5, 2004.

(ii) Represented that the Competing Offer had been made by Ms. Smith on behalf of Consumer A (Mr. Jones' relative) on October 5, 2004.

(iii) Prepared or authorized the preparation of the document represented as the Consumer A Offer.

(iv) Represented that the document represented as the Consumer A Offer was genuine, and was a copy that had been retained by Ms. Smith since October 5, 2004.

b) Asked Ms. Smith, another RECO Member, to provide false information in respect of a document purporting to be an offer to purchase real estate.

23. Mr. Jones is responsible under the following rules of the RECO Code of Ethics:

Rule 1 – Ethical Behaviour – A Member shall:

(2) endeavour to protect the public from 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 10 – Misrepresentation or Falsification – A Member shall not make any statement of participate in the creation of any document or statement that the Member knows or ought to know is false or misleading.

Rule 46 – Unprofessional Conduct – A Member shall not engage in an act or omission relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by Members or the public as disgraceful, dishonourable or unprofessional.”

The committee reviewed the agreed statement of facts and assessed a \$10,000 fine against Mr. Jones and a \$3,000 fine against Ms. Smith as well as a requirement that the real property law course be attended. In her case, the panel assumed that she was stupid rather than fraudulent.

You might have thought that would be where it would all end? Well, in respect to Ms. Smith, you'd be right, but not for Mr. Jones. He appealed.

Why? He thought the \$10,000 fine was too high for fraud!

Besides, his rights were abused. He did not understand the proceedings. He thought that when he signed a document called “Agreed Statement of Facts” that he would not be taken at all to have agreed.

He challenged the Chairman of the first Tribunal. He claims not to have understood the proceedings, or agreed to the \$10,000 penalty. When the case was over, he still thought that he was getting his “day in court”. He further claims that he was induced to sign the document by misrepresentation on the part of the Discipline Committee. He also claims undue influence and duress.

These claims I must point out relate to his actual Discipline committee attendance before the Real Estate Council of Ontario. As you can probably imagine, the justice system is not set up to trick people, misrepresent what it is doing and coerce, unduly influence and cause duress.

Now, if you were Mr. Jones, you might be under a little bit of pressure here. After all, you did try to defraud people, and you brought a colleague and a relative into your criminal activities. So, yes I can see that there would be pressure on Mr. Jones. But, it was the legal kind of self-induced pressure when a criminal is caught. Nevertheless, Mr. Jones now sees things differently.

The Appeal Committee agreed with the case and upheld the initial decision. It found that Mr. Jones who lied about the offer, drafted the false document, solicited a colleague to participate in his fraud, could really not be trusted when it came to his own version of the Discipline Committee decision. Ms. Smith accepted her penalty and did not appeal. Costs in the amount of \$1,600 were awarded to RECO. This represented \$800/day for a two day appeal.

And, do you want to know what happened next? Mr. Jones appealed to the Courts to overturn the RECO decision.

Comment

Mr. Jones should be careful. The Superior Court of Ontario generally does not favour those who commit fraud. He could find his fine escalated.

Further, there is an action for civil fraud which would result in the payment of damages. It is also a criminal offence. So he could face a fine or imprisonment or both.

In any event, the good news for consumers and other realtors is that a substantial fine will be imposed by RECO in respect to phantom offers.

As a rule, I use fictitious names and I did so in this particular case. However, I really had to think twice about not revealing the identity of Mr. Jones. So, I did go along with my usual practice. 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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