

RECO Discipline: Agent Concealing Listing and Offer



By Brian Madigan LL.B.

This is a rather unusual case that came before the Discipline Committee of the Real Estate Council of Ontario.

Here are the **allegations** of impropriety concerning the agent :

1. When he failed to post the listing of the property on the MLS as soon as he obtained the listing, in the alternative, he failed to ensure that the listing was posted by Brokerage A in a timely manner;
2. When he posted the listing of the property on the MLS and failed to advise members of the industry and the public that there had been a conditional offer that had already been accepted.
3. When he deliberately and intentionally misled other members of the industry and their clients into believing that no offer had been accepted conditionally or otherwise while he knew that indeed there was a conditional offer that had been accepted.
4. When he deliberately misled other members, their clients and the public by posting on the MLS that the property

The agent took a listing from an estate. Instead of listing it immediately on the MLS system, he decided to work the deal himself. He listed the property at \$449,000 and brought an Offer from one of his own clients at \$425,000 subject to certain conditions. After it was accepted, the agent placed the property on MLS. No indications were made that the property had already been sold at \$425,000. In fact, there were seven Offers in all, the highest being \$500,000. Many were without conditions. Most of the agents simply thought that their client was unsuccessful in their bids.

The agent agreed to forego on hearing and agreed to pay a \$20,000 fine to RECO. So, a good deal of potential testimony is missing. This obviously appears to be a

case of incredible deceit. That deceit not only involves his own client the vendors, but also involves many other realtors who together with their clients wasted valuable time and effort while this agent was plotting to secure the property for his own client thereby “double-ending” this deal.

COMMENT

In addition to this RECO fine, the agent is liable to the client for the diminution in the purchase price, that being \$75,000. Further, an agent involved in deceit as against the principal is not entitled to any commission whatsoever. An action in tort for fraud could easily result in an award of punitive damages.

And, you are probably right, this does sound like a criminal case. Nevertheless, this agent decided to let the opportunity for a hearing go by and pay the fine.

In due course, there may be another determination that suspension is warranted. Otherwise, I would certainly like to hear the explanation whatever it might be.

The initial listing took place in March 2006 before the new Act came into force.

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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