

RECO Discipline: The End Run Around the Listing Agent



By Brian Madigan LL.B.

The Real Estate Council of Ontario recently released a decision of its Discipline Committee dealing with an agent who dealt directly with the vendor.

While all of the facts are not specified, it is clear that the vendor was in the building business. An agent went directly to the company and negotiated a commission of 3.5% plus GST.

The difficulty was that the property was already listed on the local MLS system. This was unknown and not checked by the agent. It is also possible that this was a deliberate end-run to avoid the seller's agent receiving a commission.

Once higher ups at the building company became aware, the commission was reduced to 2% plus GST, which was the amount offered through MLS to cooperating agents.

The matter came on for hearing in March 2008, however the older rules were in effect at the time of the occurrence (pre REBBA 2002).

On an agreed statement of facts, the agent accepted a \$5,000.00 fine and agreed to attend the Law Course offered by the Ontario Real Estate Association (OREA)

The Discipline Committee confirmed that the agent had breached the following Rules of the RECO Code of Ethics:

Rule 1(5) – Ethical Behavior:

A Member shall:

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

Rule 11 – Discovery of Facts:

A Member shall discover and verify the pertinent facts relating to the property and 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 13 – Negotiations:

A Member shall not negotiate with or make Offers to the Client of another Member respecting matters in which the other Member is representing the Client without the knowledge, consent and involvement of the other Member.

Comment

This type of situation comes up reasonably frequently. If a property is listed, then it's easy to figure that out. Just check the MLS. It will take less than 2 minutes. However, some agents are wilfully ignorant of the facts. The thought is "I will go direct", and possibly deal directly with the builder. Then, I will get the full commission. It is interesting that the building company was not able to direct this agent to its own sales agent.

So, in part, the company was somewhat complicit in this arrangement. With a larger builder, it's possible (although unlikely) that this could happen without any subterfuge on the part of the builder, and with a smaller builder it's virtually impossible.

This is a simple enough proposition. This agent decided to do an end-run around the listing agent, and the vendor decided to double-cross the listing agent. Nice people to work with!

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.

*Brian Madigan LL.B., Realtor is an author and commentator on real estate matters, Coldwell Banker Innovators Realty
905-796-8888
www.OntarioRealEstateSource.com*