

The Unprofessional Advertisement



By Brian Madigan LL.B.

The agent ran an ad that cost \$8,000.00! That's a lot of money for a local ad running in a Periodical.

Well, that was the Fine not really the cost of the ad. So, what was so bad about the ad that it warranted an \$8,000.00 fine?

Actually, here's the ad:

*123 Main Street
Asking price: \$1.19 million,
Sold price: \$1.16 million,
Sold for: \$605,000 (2003),
Taxes: \$6,738 (2006),
5 bedrooms,
3 bathrooms,
Time on the market: 45 days*

That seems somewhat innocuous. But, the problem is that the agent required the consent of both the vendor and the purchaser, and she failed to obtain either. So, the purchaser was rather annoyed that the price he paid for the property was advertised all over the neighbourhood. He thought that was his personal business, and that of the vendor. Any others that needed to know could be told, but why was this private, confidential term in a contract between he and the vendor published and distributed for all to see?

The Real Estate Council of Ontario (RECO), the regulating body for real estate brokers, brokerages and sales representatives agreed. The listing agent was brought before a disciplinary hearing and assessed a fine of \$8,000.00.

There were certain applicable provisions of the Code of Ethics that were considered to have been breached.

“Brokers and salespersons

2. (1) A broker or salesperson shall not do or omit to do anything that causes the brokerage that employs the broker or salesperson to contravene this Regulation.

Best Interest

4. A registrant shall promote and protect the best interests of the registrant's clients.

Advertising

36. (8) A registrant shall not include anything in an advertisement that could reasonably be used to identify specific real estate unless the owner of the real estate has consented in writing.

36. (9) A registrant shall not include anything in an advertisement that could reasonably be used to determine any of the contents of an agreement that deals with the conveyance of an interest in real estate, including any provision of the agreement relating to the price, unless the parties to the agreement have consented in writing.”

The specific address, price, terms, taxes, days on the market and particulars of the bedrooms and bathrooms would all require consent.

The provisions require consent:

- 1) of the owner for identification of the property,
- 2) of the parties to the contract, for any term in the contract.

It has become commonplace for many brokerages to place this “consent form” as one of the schedules in the Offer to purchase. Rarely, do the parties object.

However, it is noteworthy that the agreement of purchase and sale is a document that is contractual agreement between two parties, not three. The brokerages sign as witnesses, and may in fact consent to hold the deposit funds pursuant to the terms of the *Real Estate and Business Brokers Act, 2002*. But, one of the elements of a contract is consideration, and there is no consideration here.

If this consent is to be properly secured, than it must be obtained outside of a simple schedule in the Offer.

So, even though many brokerages believe that they are “onside” with this practice, it will take another aggrieved purchaser to complain to RECO before we will know for sure.

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