

Case #3: Failure to Communicate and Misrepresenting a Buyer's Ability to Perform

Fact Pattern: The basis for the decision is the conclusion of the Hearing Panel as to the following summary of the facts:

The complainant (a consumer) testified that the Respondent was in violation of Articles 1, 2, 3, 4, 5, 6, 8, 9 & 11 of The Code of Ethics. The complainant stated that they did not believe that the Respondent behaved in a professional manner throughout the transaction. They stated that the respondent's actions cost the complainant additional funds in the amount of \$ 2,750. The complainant provided a multi-page document to the hearing panel as well as testimonial letters from their REALTOR® and attorney.

The respondent testified the they knew it was an extremely difficult transaction, and their buyer really wanted this particular property. Their client was using an FHA loan and the home was being marketed in an "as is" condition. The respondent testified that it was their mistake to try to take on this difficult transaction, but still felt the transaction would benefit both parties.

The complainant stated they were selling their home "as is" and knew it was in need of an exterior paint job. They stated that the Respondent assured them that their client would take care of the paint job. They stated they felt rushed into a pre-possession agreement, and that the Respondent misrepresented that their client was an able buyer for the property. The complainant also testified that they did not receive promised pictures of the issues surrounding the furnace and feel that they did not receive paperwork from the inspection of the furnace in a timely manner.

The complainant also testified that the Respondent failed to remain in contact with all parties throughout the transaction. They stated that if her own REALTOR® had not stepped in to help the buyer the deal would never have closed.

The respondent testified that they were unable to provide the photographs of the cracked furnace as the issue in question was not a place that could be photographed. The respondent testified that the interior of the property was in excellent condition, and it was the exterior that needed to be painted before their client could go forward with an FHA loan. The respondent stated that their client believed that the painting job could be handled themselves. The respondent provided an estimate by qualified lead paint contractors but the client decided against the recommendations. The respondent testified that it was an extremely difficult transaction, but that it did in fact close. The respondent also issued a sincere apology to the complainant for all of the difficulties that occurred, which the complainant accepted.

The complainant stated in closing that unfortunately this has been quite the learning experience, and unfortunately consumers need to feel heard and supported throughout the transaction, and they felt communication was severely lacking in the case of the Respondent.

The respondent stated in closing that this was a very difficult transaction but does feel that it ended with a win-win situation. They stated that they can't make excuses for or be held to promises made by the buyer.

Conclusions: The Hearing Panel in the above-stated case, found that the Respondents were not in violation of Articles 3, 4, 5, 6, 8 & 11 of the Code of Ethics. The Hearing Panel found the Respondents were in violation of the following:

1. Article 1 of the Code of Ethics due to Respondent's failure to communicate throughout the transaction, and not being honest in presenting an able buyer;
2. Article 2 of the Code of Ethics due to Respondent's misrepresentation of the ability of the buyer's ability to complete actions in a timely and approved manor;
3. Article 9 of the Code of Ethics due to Respondent's failure to provide all paperwork in a timely fashion.

Recommendation for Disciplinary Action:

1. A letter of warning, with a copy to be placed in the REALTOR® file;
2. Attendance at either of the following Education courses within one (1) year of date of filing: "Keeping Transactions Together" or "GRI 1 Ethics".