



DISCIPLINE DECISION

**IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO THE
REAL ESTATE AND BUSINESS BROKERS ACT, 2002, S.O. 2002, c. 30, Sch. C**

BETWEEN:

REGISTRAR UNDER THE *REAL ESTATE AND BUSINESS BROKERS ACT, 2002*

- AND -

RICK AURORA

DATE OF DECISION: March 9, 2010

FINDINGS: In violation of Sections 4 and 5 of the Code of Ethics

ORDER: Fine of \$4,500.00 payable to RECO within 90 days of sending this decision.

COSTS AND EXPENSES: N/A

WRITTEN REASONS:

REASONS FOR DECISION

INTRODUCTION

This hearing was held on March 9, 2010 in the presence of the Respondent Rick Aurora (the "Respondent" and/or "Mr. Aurora"); legal counsel for Mr. Aurora; legal counsel for the Registrar, *Real Estate and Business Brokers Act 2002* ("*REBBA 2002*"); and independent legal counsel to the Discipline Panel.

ALLEGATIONS BY RECO

In its allegation statement RECO alleged the following:

1. Mr. Rick Aurora is a member of RECO and is a broker registered under *REBBA 2002*.

2. At all material times Mr. Aurora was registered with Brokerage A.
3. On or about February 8, 2007, Brokerage B with Seller Representative B as its representative (the "Complainant") listed a property located at 1-A Street in City A (the "Property") with an expiry of July 30, 2007. The initial list price was \$633,000; however, it was reduced on February 28, 2007 to \$599,000.
4. On April 19, 2007, the listing was suspended. The Complainant states that the reason for this was that one of the Sellers, Seller A, would be overseas for a period of time and the wife did not want to continue with showings, etc. until he returned.
5. The Complainant states that on August 27, 2007 she discovered that the Property had been listed by Brokerage A on July 16, 2007, with Mr. Aurora as its representative and the Property was sold on July 25, 2007 for \$575,000.
6. Mr. Aurora provided RECO with a reply to the complaint on January 4, 2008. In his reply, Mr. Aurora stated that he had a previous relationship with Seller A and was contacted by him on July 10, 2007 to provide a market evaluation for the Property. Mr. Aurora stated that he looked up the Property on MLS and noticed it had been previously listed, and that, upon inquiry, the Seller advised that the listing had been cancelled in April 2007.
7. Mr. Aurora stated to RECO that in looking up the listing, he inadvertently looked at the "last update" entry on the MLS (rather than the expiry date), which was April 18, 2007.

RECO alleged that as a result of the foregoing Mr. Aurora acted unprofessionally when he:

1. Caused to be listed for sale on the MLS, a property which had already been listed by Brokerage B with the Complainant as its representative and which listing he knew or ought to have known was still active at the time he listed it.
2. Exposed his Seller clients to a scenario in which they may owe two commissions to two different brokerages upon the sale of the Property.
3. Failed to thoroughly check the facts and/or listing history of the Property before taking the listing on behalf of Brokerage A.
4. Failing to approach the Complainant to verify the facts and/or listing history of the Property before allowing the Sellers to enter into a Listing Agreement with his brokerage.

RECO alleged that Mr. Aurora breached the following Rules of the RECO's Code of Ethics:

s. 4 – Best Interests

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

s. 5 – Conscientious and competent service, etc.

A registrant shall provide conscientious service to the registrant's clients and customers and shall demonstrate reasonable knowledge, skill, judgment and competence in providing those services.

s. 7(1) – Dealing with other registrants

A registrant who knows or ought to know that a person is a client of another registrant shall communicate information to the person for the purpose of a trade in real estate only through the other registrant, unless the other registrant has consented in writing.

EXHIBITS

1. Allegation Statement, November 19, 2009
2. Notice of Hearing, dated January 26, 2010
3. Book of Documents - RECO

WITNESS FOR THE REGISTRAR, REBBA 2002:

1. Seller Representative B

RECO had Seller Representative B review and verify all of the Agreements pertaining to the original listing of 1-A Street, City A, including the Listing Agreement, Price Amendment and Suspension Agreement, with particular focus on the Suspension Agreement dated April 19, 2007. Seller Representative B stated that the reason for the suspension was that one of the Sellers, Seller A, was going to be overseas and his wife did not want any showings while he was away. Seller Representative B also stated that she advised the Sellers that doing renovations to their basement would help sell the Property.

Seller Representative B testified that Seller A indicated he would have the suggested renovations done on his return from overseas.

Seller Representative B also stated that she regularly followed up with the Sellers every week, and on one call she spoke with the housekeeper who indicated the basement renovations looked great.

Seller Representative B testified that she attended a party at the home of Seller A, and it was at that party where she had the Suspension Agreement signed.

During her cross examination, Seller Representative B was questioned about the timing of the execution of the Listing Agreement and the Price Amendment. She indicated that it was her normal practice to get an amendment signed at the time of listing if there is a feeling that the listing price was too high. Under further questioning on when precisely

the Price Amendment was executed, Seller Representative B conceded she was unsure when the amendment was actually signed.

On the issue of the Suspension Agreement and whether it was actually a cancellation that the Sellers wanted, counsel for Mr. Aurora indicated to Seller Representative B that Seller A would be testifying that it was a cancellation he was expecting to execute. Seller Representative B indicated that if that was going to be Seller A's evidence, he would not, in her view, be telling the truth.

Seller Representative B was asked about her follow up contact with the Sellers after the suspension of the listing agreement. She testified that she never visited the Property nor did she talk to Seller A's wife after the Suspension Agreement had been signed. However, Seller Representative B said that she made regular phone calls to and had left messages for Seller A.

When asked about the showings she had during the listing, Seller Representative B advised that there were nine (9) showings, with the last one just prior to the suspension of the listing.

WITNESSES FOR THE RESPONDENT:

1. Rick Aurora

Mr. Aurora testified that his first contact with the Seller was when Seller A called and said he wanted to sell the Property. Mr. Aurora advised that Seller A indicated that the Property had been listed previously and that the listing had been cancelled in April 2007. Mr. Aurora stated he set up a meeting at the home of the Sellers a couple of days later. Mr. Aurora then checked the MLS to prepare a market evaluation for the Property.

Mr. Aurora testified that, upon reviewing the MLS listing, he made a mistake and confused the date of April 18, 2007, which was actually the date of the last update for the listing, with the cancellation of the listing. He stated that, in viewing the MLS listing,

he was attempting to verify that the listing had been cancelled but he inadvertently misread the information. Mr. Aurora testified that it was his practice not to list a property and, in fact, he would not even discuss listing a property, if he thought it was currently listed. In this case, however, he stated that he simply made a mistake when he was verifying the status of the listing on the MLS.

Mr. Aurora further testified it was, in fact, his recommendation to the Sellers that it would be in their interests before he even listed the Property if they would first renovate their basement.

During cross examination, RECO asked why Mr. Aurora did not check with Seller Representative B about the status of the listing. Mr. Aurora stated he relied on the Sellers' information that the listing had been cancelled. When he was asked if it was his practice to check all the information prior to listing a property, he answered yes but that, on this occasion, he did not check closely enough.

RECO's counsel also pointed out the top right hand box on the MLS listing for the Property which confirmed the status of the listing as "SUS" (i.e. suspended). Mr. Aurora indicated that he did not see that notation when he looked at the listing because his focus was on notations at the bottom of the posting for the Property.

2. Seller A

Seller A testified that he and his wife listed the Property with Seller Representative B in February 2007 and that even after the price of the Property was reduced there was very little activity. Seller A stated that in April 2007 his personal circumstances had changed such that he no longer needed to sell the Property. Seller A also testified that, at that time, he requested Seller Representative B to cancel the listing. It was Seller A's testimony that he had no discussion with Seller Representative B concerning the renovation of the basement for the Property.

Seller A testified that his personal circumstances changed again, in the early summer of 2007, which required him to sell the Property. He stated he felt it was time to change Realtors because the property had not sold when it was listed with Seller Representative B. Seller A testified that he subsequently contacted Mr. Aurora and it was Mr. Aurora who had suggested the basement be renovated prior to any showings. Accordingly, such work was completed on the basement. Seller A stated that the Property was sold after one day of being listed with Mr. Aurora.

Seller A testified that he had no further discussion with Seller Representative B but confirmed she possibly had left him messages that he never returned.

The thrust of Seller A's evidence was that he believed that, in signing the agreement which was actually the Suspension Agreement, he was actually cancelling the listing with Seller Representative B.

SUBMISSIONS BY RECO

RECO noted that, while there was no indication of malicious intent on the part of Mr. Aurora in this case, there was a failure of due diligence by him. RECO stated that a strong message should be sent by the Panel to Registrants concerning the consequences of having more than one listing for a property because it can expose a Seller to two commissions. Registrants therefore need to protect the interest of their Clients. RECO said the evidence confirmed that Mr. Aurora failed to protect his Client's interests in this case and that Mr. Aurora had actually admitted that he did not read the information on the MLS carefully enough. RECO submitted that, where information from a client can be verified using another source, a Registrant should not rely solely on his or her client's information, especially when legal rights and obligations are at stake. A Seller may sometimes be untruthful or inaccurate in the information which is being provided and therefore independent verification by the Registrant is an important part of providing effective service.

SUBMISSIONS BY THE RESPONDENT

Counsel for Mr. Aurora stated that this case involved nothing more than an inadvertent mistake by Mr. Aurora. Mr. Aurora simply misread or misinterpreted the MLS information on the Property, specifically the status of the listing. It was submitted that if Mr. Aurora had actually read the information correctly, he would have done more investigation in the circumstances. However, because of his misunderstanding of the information on the MLS, it was easy to understand why Mr. Aurora did not make any further inquiries about the status of the listing. Counsel for Mr. Aurora also stated that, while Mr. Aurora's error did indeed expose the Sellers to the possibility of having to pay double commissions, in this instance no harm to the Sellers arose. Counsel further stated that Seller Representative B did not seek any damages or pursue payment of her own commission as a result of the sale of the Property. Once again, it was submitted that this case involved nothing more than an inadvertent mistake, rather than a question of unethical conduct by Mr. Aurora.

SUBMISSIONS REGARDING PENALTY

RECO submitted that Registrants have a duty to protect the public and uphold the professionalism of the industry. While there was no indication of malicious intent in this case, RECO claimed that Mr. Aurora should have been familiar with what was required of him and therefore an administrative penalty of \$12,000 was appropriate. Counsel for Mr. Aurora stated that this was nothing more than a case involving an inadvertent mistake to which Mr. Aurora has admitted and apologized. Counsel for Mr. Aurora cited a similar decision by another disciplinary panel (RECO vs. Myers) where the penalty imposed was \$1,000. Therefore, it was suggested that a maximum penalty of \$1,000 would be appropriate if Mr. Aurora should be found to have breached the Code of Ethics.

FINDINGS BY THE PANEL

Having carefully considered the testimony of the witnesses at the hearing, and the documentary evidence, the Panel has arrived at the following conclusions:

There is no dispute that the Sellers were subject to two listing agreements for the Property and, as a result, the Sellers were exposed to the possibility of paying two commissions for the same transaction. It was also acknowledged by Mr. Aurora that, by virtue of his mistake of not reading the MLS information correctly or thoroughly, he did cause the Sellers to enter into a second listing agreement. While the Panel believes Mr. Aurora's testimony that his practice is not to list a property or even discuss listing a property if it might be currently listed, his actions did expose the Sellers to potential harm. The admission by Mr. Aurora that he was careless or that he made an inadvertent mistake does not relieve him of his duties and obligations to his Client.

Seller A testified that he believed that he had requested and had received a cancellation of his listing with Brokerage B. The Panel finds that there was conflicting evidence as to whether there was to be a suspension or a cancellation of the listing. Notwithstanding the confusion, however, there is no suggestion that Brokerage B was under any obligation to provide a cancellation of the listing or that Seller Representative B had been inadvertent or careless in her conduct.

The Panel cannot emphasize too strongly that verifying all the information from a client where legal obligations and rights are concerned is critical, especially if the initial source of the information is the client him or herself. In this instance, it was even more critical to verify the status of the listing because Seller A had confirmed that there had previously been an actual listing with another broker. Indeed, this was not a situation where the would-be client had advised that the Property had never been listed previously.

In fact, the available information was that the Property had actually been listed earlier in the same year, thus raising the clear risk that the listing could still be in effect. At all times, Mr. Aurora had the correct information available to him on the MLS to verify independently of the Sellers, that the Property was still subject to a valid listing. As a result, the onus and expectation was on him to know how to properly read the MLS listing and advise the Sellers of the discrepancy between their information or belief

about the listing and the information on the MLS. Mr. Aurora failed to do this. His inadvertence only added to the problem.

Evidence was also given by Seller Representative B and Seller A about when and where the price amendment and suspension agreement were signed. While they offered different evidence as to when the suspension agreement was signed, the Panel finds that the place where that agreement was signed is not relevant to the findings it needs to make.

Similarly the issue of which Registrant recommended the basement renovations is not relevant to the allegations concerning the breach of the Code of Ethics.

For these reasons, the Panel agrees that RECO has proven that Mr. Aurora breached section 4 –Best Interests and section 5 – Conscientious and Competent Service, under the Code.

The Panel also finds that s. 7(1) – Dealings with Other Registrants, is not applicable to the circumstances of this case and, accordingly, was not breached by Mr. Aurora.

A Registrant is not expected or obligated to verify the facts or check the listing history of all the previous listing agreements for a property.

PENALTY

Further, based on the reasons set forth herein, the Panel has also decided that the following penalty is appropriate:

An administrative penalty of \$4,500.00 shall be paid by Mr. Aurora to RECO within 90 days of RECO sending this decision to him.

As no costs were requested, no costs are ordered.