



Real Estate Council of Ontario

DISCIPLINE DECISION

**IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO
BY-LAW NO. 10 OF THE REAL ESTATE COUNCIL OF ONTARIO**

BETWEEN:

**MANAGER OF COMPLAINTS, COMPLIANCE AND DISCIPLINE
REAL ESTATE COUNCIL OF ONTARIO**

- AND -

PETER MAZURKIEWICZ & HOMELIFE RESPONSE REALTY INC.

DATE OF DECISION: December 9, 2008

FINDINGS: In violation of Rules 1(1), 1(2), 1(3), 2, 11 and 42 of the RECO
Peter Mazurkiewicz Code of Ethics

PENALTY: Administrative Penalty of \$10,000.00 payable to RECO within
60 days of sending this decision.

FINDINGS: In violation of Rules 1(1), 1(2), 1(3), 2, 11 and 43 of the RECO
Homelife Response Code of Ethics
Realty Inc.

PENALTY: Administrative Penalty of \$5,000.00 payable to RECO within 60
days of sending this decision.

COSTS AND EXPENSES: N/A

WRITTEN REASONS:

REASONS FOR DECISION

The hearing was held on December 9, 2008 and proceeded as an Agreed Statement of Facts and Recommended Penalty. The Agreed Statement of Facts and Recommended Penalty was submitted to the Panel by RECO's Counsel. The Respondent did not attend. The Agreed Statement of Facts and Recommended Penalty read:

AGREED STATEMENT OF FACTS AND RECOMMENDED PENALTY

1. Mr. Peter Mazurkiewicz ("Mr. Mazurkiewicz") is a member of RECO and a salesperson registered under the *Real Estate and Business Brokers Act, 2002* S. O 2002, Chapter 30 Scheduled C ("REBBA 2002").
2. At all material times, Mr. Mazurkiewicz was employed by Homelife Response Realty Inc. ("Response Realty"), a brokerage registered under the REBBA 2002.
3. Buyer A and Buyer B (the "Complainants") were buying a property for the first time in a rural area.
4. They bought a property located at 1-AB Street (the "Property"). The Complainants were represented by Response Realty with Mr. Mazurkiewicz as their sales representative.
5. The Property was listed by Seller Brokerage C with Seller Representative C as the listing salesperson.
6. On or about June 13, 2005, the Complainants made an Offer to purchase the Property (the "Offer"). The Offer was:
 - a) Dated June 13, 2005
 - b) The parties to the Offer were the Complainants and Seller C (the Seller)
 - c) The Offer was set to complete on November 15, 2005.
7. The Complainants offered three hundred sixty-five thousand dollars (\$365,000.00) for the Property. This Offer was signed back by the Seller at three hundred eighty thousand dollars (\$380,000.00) and the counter-offer was accepted on June 13, 2005 at 7:30 p.m.
8. The Offer was conditional only on home inspection.
9. The information on the MLS system disclosed that the Property had a well as water supply system and it also had a septic tank.
10. Mr. Mazurkiewicz did not insert into the Offer conditions for quantity or quality of water or with respect to the condition of the septic tank system.

11. On or about June 16, 2005, the condition of home inspection was waived and the transaction went firm.
12. When the transaction closed the Complainants moved into the Property, they soon discovered that there were problems with the quantity and quality of water on the Property.
13. On or about August 23, 2006, Mr. Mazurkiewicz responded to the complaint filed by the Complainants in relation to the water problems. In his response Mr. Mazurkiewicz stated that:
 - a) He showed the Property on two occasions
 - b) On the first occasion, the listing salesperson was present while the Seller was present at both times
 - c) The Buyers and Sellers all spoke Polish and there was therefore no language barrier
 - d) The parties had a long discussion about the well and the septic tank
 - e) The Seller advised the Buyers that they had to pump the septic tank within two years and that she had experienced no problems with the well.
14. Mr. Mazurkiewicz also indicated that he had inserted the condition of home inspection and advised that the home inspection would, in his own words: "in all likely hood recommend that the water well be checked".
15. The home inspection was declined by the Complainants.
16. Attached to the Mr. Mazurkiewicz letter of August 23, 2006 was a letter from his broker dated August 25, 2006 (the "August 25, 2006 Letter"). The August 25, 2006 Letter was signed by Buyer Broker AB, Broker of Record.
17. In the August 25, 2006 Letter, Buyer Broker AB on behalf of Response Realty supported the position of Mr. Mazurkiewicz that Response Realty and Mr. Mazurkiewicz had inserted an inspection clause that the Complainants waived without conducting the required home inspection.

18. Buyer Broker AB indicated that Mr. Mazurkiewicz acted professionally and had inserted the condition of inspection.
19. Neither Mr. Mazurkiewicz nor Response Realty advised the Buyers:
- a) That they should insert a clause in their Offer, requesting for a potability test of the well water be done
 - b) Of the importance of conducting a flow test to determine that the well supplied adequate water for the Property
 - c) To request or require the Seller to produce the well certificate, and
 - d) Have the Seller produce information in relation to the septic system.
20. Mr. Mazurkiewicz asserts that the water problem is the result of fluctuating ground water levels and increased use by the Complainants.
21. On or about February 19, 2007, the Complainants wrote to RECO (the "February 19, 2007 Letter"). Enclosed with the February 19, 2007 Letter were:
- a) A letter from ESSE regarding Environmental Health Inspection – Water Quality and Septic System Inspection. The letter was dated September 3, 2006 (the "ESSE letter")
 - b) The certificate of well water analysis from E 3 Laboratories
 - c) An analytical request chain of custody from E 3 Laboratories
 - d) An Order to remedy unsafe building issued by the Town of Town C dated January 30, 2007 (the "January 30, 2007 Order").
23. The ESSE letter indicated that the sewage disposal system of the Property had a significant malfunction which posed both health and environmental risks. The ESSE letter further indicated that the sewage disposal system of the Property may have been installed incorrectly without a property building permit.
24. The ESSE letter also indicated that the water from the well was bacterially unsafe for drinking as it showed total coliform count of 29.

25. The ESSE letter also recommended that due to the unsafe bacterial condition of the well, inadequate construction to prevent surface entry, and the inadequate yield of the well to supply the demands of the house, the existing bored well be decommissioned and replaced with a new properly sited and constructed well by a licenced well contractor.
26. The January 30, 2007 Order required that the Complainants apply and obtain a permit to replace the on-site sewage disposal system and install a new septic system.
27. On or about May 14, 2007 the Registrar wrote to Mr. Mazurkiewicz requesting for additional documentation.
28. On or about May 23, 2007, Mr. Mazurkiewicz replied to the May 14, 2007 letter. The reply reiterated the response earlier filed by Mr. Mazurkiewicz.

Summary of Allegations

1. Accordingly, Mr. Mazurkiewicz acted unprofessionally when he:
 - a) Failed to advise his clients in writing, of the importance of conducting water potability test.
 - b) Failed to insert into the Offer a condition that water potability test be conducted.
 - c) Failed to advise his clients in writing of the importance of conducting a flow test for the well.
 - d) Failed to insert into the Offer a condition requiring the Seller to produce a well certificate.
 - e) Failed to insert into the Offer a condition requiring the Seller to produce a waste disposal certificate and/or a provision to have the septic system inspected by a qualified person.

And is therefore responsible under the following rules of the RECO Code of Ethics:

Rule 1 – Ethical Behaviour

A Member shall:

- (1) endeavour to protect and promote the best interests of the Member's client,

- (2) endeavour to protect the public from fraud, misrepresentation or unethical practice in connection with real estate Transactions,
- (3) maintain and enhance the Member's degree of skill and competence.

Rule 2 – Primary Duty to Client

A Member shall endeavour to protect and promote the best interests of the Member's Client. This primary obligation does not relieve the Member of the responsibility of dealing fairly, honestly and with integrity with others involved in each transaction.

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 42 – Competence

A Member shall render conscientious service with the knowledge, skill, judgment and competence, in conformity with the Code of Ethics and the standards which are reasonably expected of Members. When the member is unable to render such a service, either alone or with the aid of another Member, the Member shall decline to act.

We also direct you to review the Guiding Principles of the RECO Code of Ethics. In particular, please refer to the Guiding Principles under Rules 1, 2, 11 and 42.

2. Accordingly, Homelife Response Realty Inc. acted unprofessionally when it:
 - a) Failed to advise its clients in writing, of the importance of conducting water potability test.
 - b) Failed to insert into the Offer a condition that water potability test be conducted.
 - c) Failed to advise his clients in writing, of the importance of conducting a flow test for the well.
 - d) Failed to insert into the Offer a condition requiring the Seller to produce a well certificate.

- e) Failed to insert into the Offer a condition requiring the Seller to produce a waste disposal certificate and/or a provision to have the septic system inspected by a qualified person.
- f) It failed to supervise the activities of Mr. Mazurkiewicz to ensure that the necessary advice and clauses were inserted to protect its clients.

And is therefore responsible under the following Rules of the RECO Code of Ethics:

Rule 1 – Ethical Behaviour

A Member shall:

- (1) endeavour to protect and promote the best interests of the Member's Client,
- (2) endeavour to protect the public from fraud, misrepresentation or unethical practice in connection with real estate Transactions,
- (3) maintain and enhance the Member's degree of skill and competence,

Rule 2 – Primary Duty to Client

A Member shall endeavour to protect and promote the best interests of the Member's Client. This primary obligation does not relieve the Member of the responsibility of dealing fairly, honestly and with integrity with others involved in each Transaction.

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 43 – Broker Responsibility

A Broker shall be responsible for the professional conduct and professional actions of those Members registered with that broker.

JOINT SUBMISSION AS TO PENALTY

RECOMMENDED PENALTY:

- A. Mr. Mazurkiewicz be Ordered to pay a penalty of \$10,000.00 within 60 days of the decision of the Discipline Committee being sent to him.

- B. Homelife Response Realty Inc. be Ordered to pay a penalty of \$5,000.00 within 60 days of the decision of the Discipline Committee being sent to it.

The undersigned consent that the matter of RECO and PETER MAZURKIEWICZ & HOMELIFE RESPONSE REALTY INC. be disposed of by way of this Agreed Statement of Facts and Joint Submission as to Penalty.

Accordingly, the Agreed Statement of Facts and Joint Submission as to Penalty will be heard at RECO Chambers on a date chosen by RECO.

PETER MAZURKIEWICZ & HOMELIFE RESPONSE REALTY INC. acknowledges that should they wish to attend at RECO on the date that the Agreed Statement of Facts and Joint Submission as to Penalty will be heard by the Discipline Committee that they advise RECO forthwith.

PETER MAZURKIEWICZ & HOMELIFE RESPONSE REALTY INC. acknowledges that they were advised of their right to be represented by legal counsel in this matter.

[The Agreed Statement was duly signed by the Parties.]

Decision of the Panel

Peter Mazurkiewicz

Having reviewed and considered the Agreed Statement of Facts, the Panel concluded that the Respondent breached Rules 1(1), 1(2), 1(3), 2, 11 and 42 of RECO's Code of Ethics. The Panel is also in agreement with the Joint Submission of the parties as to penalty and accordingly makes the following order

Administrative Penalty of \$10,000.00 payable to RECO within 60 days of sending this decision.

Homelife Response Realty Inc.

Having reviewed and considered the Agreed Statement of Facts, the Panel concluded that the Respondent breached Rules 1(1), 1(2), 1(3), 2, 11 and 43 of RECO's Code of Ethics. The Panel is also in agreement with the Joint Submission of the parties as to penalty and accordingly makes the following order:

Administrative Penalty of \$5,000.00 payable to RECO within 60 days of sending this decision.