NATIONAL ASSOCIATION OF REALTORS®
Code of Ethics Video Series

Case Interpretations Related to Article 15

Note: The following information is reprinted from the current NATIONAL ASSOCIATION OF REALTORS® *Code of Ethics and Arbitration Manual.*

Case #15-1: Knowing or Reckless False Statements About Competitors (Adopted Case #23-1 November, 1992. Transferred to Article 15 November, 1994.)

REALTOR® A operated a residential brokerage firm in a highly competitive market area. He frequently used information from the MLS as the basis for comparative ads and to keep close track of his listing and sales activity as well as his competition.

One day, while reviewing MLS data and comparing it to a competitor's ad, REALTOR® A noticed that REALTOR® Z had used a diagram to demonstrate his market share, contrasting it with those of several other firms. The ad showed that REALTOR® A had listed 10% of the properties in the MLS over the past three months.

REALTOR® A thought this was low. His analysis of MLS data showed his market share was 11%. REALTOR® A filed an ethics complaint against REALTOR® Z citing Article 15 of the Code of Ethics in that REALTOR® Z's "obviously understated market share claim" was a "misleading statement about competitors." REALTOR® A's complaint was considered by the Grievance Committee which determined that an ethics hearing should be held.

At the hearing, REALTOR® Z testified he had always been truthful in his advertising and that all claims were based in fact. He produced an affidavit from the Board's MLS administrator which indicated that a programming error had resulted in miscalculations and, after careful recomputation, REALTOR® A's market share over the past three months had been 10.9%. The administrator's statement noted that this was the first time that information related to REALTOR® A's listings or sales had been misstated on the system. "I relied on information from the MLS. It's always been accurate and I had no reason to even suspect it was wrong last month," said REALTOR® Z in his defense.

The Hearing Panel agreed with REALTOR® Z's logic, noting that a REALTOR® should be able to rely on generally accurate information from reliable sources. They reasoned that if, on the other hand, the MLS had shown REALTOR® A having, for example, 1% of the market, then REALTOR® Z's reliance on the information would have been "reckless" because REALTOR® A had generally had a 10–15% market share and a reasonable conclusion would have been that the information from the MLS was seriously flawed.

The Hearing Panel concluded that REALTOR® Z's comparison with his competitors, while slightly inaccurate, was based on usually accurate and reliable information and had been made in good faith and while technically "misleading," had not been "knowing" or "reckless". REALTOR® Z was found not to have violated Article 15.

Case #15-2: Intentional Misrepresentation of a Competitor's Business Practices (Adopted Case #23-2 November, 1992. Transferred to Article 15 November, 1994. Revised November, 2001.)

Following a round of golf early one morning, Homeowner A approached REALTOR® X. "We've outgrown our home and I want to list it with you," said Homeowner A. "I'm sorry," said REALTOR® X, "but I represent buyers exclusively." "Then how about REALTOR® Z?," asked Homeowner A, "I've heard good things about him." "I don't know if I would do that," said REALTOR® X, "while he does represent sellers, he doesn't cooperate with buyer brokers and, as a result, sellers don't get adequate market exposure for their properties."

Later that day, Homeowner A repeated REALTOR® X's remarks to his wife who happened to be a close friend of REALTOR® Z's wife. Within hours, REALTOR® Z had been made aware of REALTOR® X's remarks to Homeowner A earlier in the day. REALTOR® Z filed a complaint against REALTOR® X charging him with making false and misleading statements. REALTOR® Z's complaint was considered by the Grievance Committee which determined that an ethics hearing should be held.

At the hearing REALTOR® Z stated, "I have no idea what REALTOR® X was thinking about when he made his comments to Homeowner A. I always cooperated with other REALTORS®." REALTOR® X replied, "That's not so. Last year you had a listing in the Multiple Listing Service and when I called to make an appointment to show the property to the buyer, you refused to agree to pay me." REALTOR® Z responded that he had made a formal offer of subagency through the MLS with respect to that property but had chosen not to offer compensation to buyer agents through the MLS. He noted, however, that the fact that he had not made a blanket offer of compensation to buyer agents should not be construed as a refusal to cooperate and that he had, in fact, cooperated with REALTOR® X in the sale of that very property.

In response to REALTOR® Z's questions, REALTOR® X acknowledged that he had shown his buyer-client REALTOR® Z's listing and that the buyer had purchased the property. Moreover, REALTOR® X said, upon questioning by the panel members, he had no personal knowledge of any instance in which REALTOR Z had refused to cooperate with any other broker but had simply assumed that REALTOR® Z's refusal to pay the compensation REALTOR® X had asked for was representative of a general practice on the part of REALTOR® Z.

The Hearing Panel, in its deliberations, noted that cooperation and compensation are not synonymous and though formal, blanket offers of cooperation and compensation can be communicated through Multiple Listing Services, even where they are not, cooperation remains the norm expected of REALTORS®. However, to characterize REALTOR® Z's refusal to pay requested compensation as a "refusal to cooperate" and to make the assumption and subsequent statement that REALTOR® Z "did not cooperate with buyer agents" was false, misleading, and not based on factual information. Consequently, REALTOR® X was found in violation of Article 15.