

## DECISION OF ETHICS HEARING PANEL OF THE PROFESSIONAL STANDARDS COMMITTEE

**Findings of Fact:** The hearing panel finds the following facts in support of its conclusion regarding the alleged violations of the Code of Ethics:

Complainant #1 and Complainant #2 (collectively, the "Complainants") filed a complaint (the "Complaint") alleging that Respondent (the "Respondent") violated Articles 5 and 10 of The Code of Ethics and Standards of Practice of the National Association of REALTORS® (the "Code"). Upon review of the Complaint by the Greater Rochester Association of Realtors ("GRAR") Grievance Committee, Article 5 was deleted from consideration. Respondent served as the listing agent for a property (the "Property"). The Complaint and Complainants' testimony at a hearing before a panel of the GRAR Professional Standards Committee focused on Respondent's alleged inappropriate questions concerning the buyer and the intended use of the Property upon inquiry by Complainants' agent ("Complainants' Agent").

Prior to submitting any offer to purchase the Property, Complainants' Agent exchanged text messages with Respondent regarding the Property and Complainant #1's intended offer. Respondent sent a series of text messages to Complainants' Agent including the question "Owner occupied?" and, when Complainants' Agent responded affirmatively, Respondent inquired "Parents buying for a grown kid to live in?" to which Complainants' Agent did not reply.

On the same day, Complainants' Agent submitted, on behalf of Complainant #1, an offer to purchase the Property in cash, with an escalation clause that would increase the offer up to a maximum in Two Thousand Dollar (\$2,000.00) increments over the next highest offer (the "First Offer"). The First Offer included a Ten Thousand Dollar (\$10,000.00) deposit, waived inspections, and left the closing date blank. Respondent's client, the seller of the Property ("Seller") received six (6) offers for the Property on the same day which was the date set for delayed negotiations. Respondent testified that the First Offer was not the highest purchase price, but that the limit on the escalation clause was higher than the other escalation clause limits. Seller submitted a counter proposal in response to another of the six (6) offers and the other offeror verbally accepted, but backed out hours later.

Thereafter, Seller submitted a counteroffer to Complainant #1 (the "First Counteroffer"). Respondent testified that she explained to Seller that the Property was not actually worth that amount, but that Seller believed Complainant #1 was willing to pay that amount given the limit on the escalation clause in the First Offer. Complainants responded to the First Counteroffer with a purchase price that was about halfway between the First Offer and the First Counteroffer (the "Second Offer"). The Seller ignored the Second Offer and accepted an offer from another offeror for a slightly higher purchase price (the "Accepted Offer").

Respondent testified that nearly a month later, while Seller was under contract on the Accepted Offer and working toward an anticipated closing, Complainant #2 reached out to Seller directly regarding the sale of the Property. Respondent testified that Seller instructed Respondent to reach out to Complainants' Agent to secure a back-up offer for the Property in the event that the pending transaction fell through. Complainants testified that Complainants' Agent advised them if the buyer under the Accepted Offer failed to close by the end of that week, Seller would "be given the opportunity to buy" the Property. Complainants testified that they then reached out to

Seller directly and agreed to pay just over the purchase price under the Accepted Offer. Complainants' Agent submitted an offer for such amount on behalf of Complainant #1 to Respondent (the "Third Offer"). Seller accepted the Third Offer subject to the non-performance of the buyer under the Accepted Offer by the following week. Complainants testified that they felt they were misled as it was their understanding that the performance of the Accepted Offer had to occur by that week, rather than the following week, and for that reason, Complainant #1 declined to move forward. The Accepted Offer proceeded to closing shortly thereafter.

Complainants alleged that Respondent's inquiries regarding whether Complainant #1's intention was for the Property to be "owner occupied" and whether the offer was from a parent purchasing the Property for "a grown kid to live in" were inappropriate and violated Article 10 of the Code in that those inquiries constituted participation in a plan or agreement to discriminate against Complainants on the basis of familial status and/or indicated a preference, limitation or discrimination based on familial status (as set forth in Standard of Practice 10-3). Complainant #2 testified that she believes Respondent had a personal interest in determining whether the Property would be owner-occupied because Respondent owns a home in the neighborhood. Respondent testified that neither she nor Seller had any intention to avoid selling the Property to Complainant #1 regardless of his intended use of the Property which was evidenced by the fact that Seller submitted counteroffers to Complainant #1 giving him multiple opportunities to purchase the Property. Respondent testified further that the questions she asked on behalf of her Seller were unrelated to the familial status of Complainants and that the Seller simply wanted to know who was buying the Property.

#### **Conclusions of the hearing panel:**

We, the members of the Hearing Panel in the above-referenced case, find the Respondent did not violate Article 10 of the Code. The evidence does not establish that Respondent's questions regarding whether the Property would be owner occupied or would be used to provide housing for the buyer's adult child related to a plan or agreement to discriminate against Complainants on the basis of familial status and/or indicated a preference, limitation or discrimination based on familial status, particularly given that none of Respondent's questions related to whether Complainant intended to occupy the Property with minor children.