

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 ("Complainant") filed a complaint (the "Complaint") alleging that Respondent #1 and Respondent #2 (each a "Respondent" and, collectively the "Respondents"), violated Articles 10 and 16 of the Code of Ethics and Standards of Practice of the National Association of REALTORS® (the "Code"). Respondent #1, a licensed real estate agent served as the listing agent for the lease of a property (the "Property"). Complainant represented the tenant ("Tenant") in the negotiation of a lease of the Property from Respondent #1's client, the owner of the Property ("Landlord"). Respondent #2 is Respondent #1's Realtor Principal. The Complaint and Complainant's testimony at a hearing before a panel of the GRAR Professional Standards Committee (the "Hearing"), focused on Respondent #1's and Landlord's attempt to renegotiate the terms of a lease after execution based on the fact that the Tenant had a minor child who would be living with Tenant at the Property.

Respondent #1 testified that Respondent #1 began working with Landlord to list the Property for lease three months prior to receiving an inquiry from Complainant on behalf of the Tenant. Initially, Respondent #1 testified, the rent for the Property was listed at \$2,600 per month. After about two months on the market, Respondent #1 testified that the rent was advertised as "variable rate" starting at \$2,000 with the monthly rent to include all utilities as well as landscaping and snow removal. Respondent #1 explained that one of the factors Landlord was considering in negotiating rent with prospective tenants was the number of intended occupants and the impact that such factor would have on the cost of the included utilities for Landlord.

Complainant requested a private showing of the Property and toured the Property with Tenant on facetime so that Tenant could view the Property virtually. A few days later, Complainant communicated with Respondent #1 regarding Tenant's interest in the Property and desire to lease it from Landlord for one (1) year at a rate of \$2,000 per month. Respondent #1 testified that around the same time, Landlord had received two other inquiries and had narrowed it down to Tenant's offer and one other offer which was for \$2,500 per month for a six (6) month term. Respondent #1 sent a text message to Complainant the next day, indicating that Landlord would rather sign a lease for a term of one (1) year, and asked if Tenant would be willing to offer anything more than \$2,000 per month. In the course of text message communications between Complainant and Respondent #1, Complainant disclosed that the only occupant would be Tenant "and Tenant's minor child when Tenant's minor child decides to stay over." Respondent #1 testified that Respondent #1 was under the impression that Tenant's child lived primarily with the child's other parent and attended school in another school district and that, accordingly, the child would not be living at the Property with Tenant but visiting from time to time. Landlord and Tenant ultimately agreed upon monthly rent of \$2,200 for a one-year term and executed a lease agreement dated as of the first day of the following month (the "Lease").

After execution of the Lease, Landlord and Tenant communicated directly regarding, among other things, Tenant's move into the Property. Tenant arrived at the Property to move in on a couple of days prior to the first day of the Lease. Respondent #1 testified that Landlord was not expecting Tenant until the following day but agreed to allow early move-in. Tenant testified at the Hearing that Landlord seemed to be surprised by something upon

meeting Tenant at the Property and that Tenant believed Landlord was surprised Tenant is black. While showing Tenant the Property and before giving Tenant the keys, Tenant testified that Tenant mentioned Tenant's minor child would be staying in one of the bedrooms and that Landlord became upset stating that Landlord "didn't agree to this". Tenant testified that Landlord went into another room to call Respondent #1 and then came back into the room with Tenant where Landlord placed Respondent #1 on speakerphone. Tenant testified that Respondent #1 explained Landlord did not realize Tenant's minor child would be living with Tenant at the Property and that Landlord had agreed to the rent stated in the Lease based on Landlord's belief that Tenant would be the sole occupant. Tenant testified that Respondent #1 asked Tenant if Tenant would be willing to pay more based on the fact that Tenant's minor child would be staying with Tenant. Tenant testified that Tenant offered to pay for utilities, but that the Landlord said that is "not how it works".

Respondent #1 testified that when Respondent #1 received the call from Landlord on the move in day, Landlord was upset and asked what Respondent #1's understanding was with respect to the occupancy of the Property by Tenant's child. Respondent #1 testified that Respondent #1 explained to Landlord that Respondent #1 believed the child would visit from time to time but that the child primarily resided with the other parent in a neighboring Town. Respondent #1 testified that the Landlord was upset because Landlord was now under the impression that Tenant's child would be "living" there which connoted a more permanent occupancy. Respondent #1 testified that Landlord was solely concerned with the number of occupants rather than the fact that Tenant intended to have Tenant's child living at the Property. Respondent #1 acknowledged exchanging pleasantries with Tenant while on speakerphone but denied having suggested that Tenant pay additional rent. Respondent #1 testified that the conversation while on speakerphone was exclusively between Landlord and Tenant and that Respondent #1 did not substantively participate in or contribute to the conversation. Respondent #1 testified that Landlord asked Respondent #1 if Respondent #1 wanted Tenant's phone number to call directly and that Respondent #1 refused and explain that it would be inappropriate to communicate with Tenant directly.

Tenant and Complainant testified that Tenant then called Complainant who called Respondent #1. Complainant testified that Complainant explained to Respondent #1 that it would be unethical and illegal for the Landlord to charge a higher rent based on the presence of Tenant's minor child because it would constitute discrimination based on familial status. Complainant testified that Respondent #1 explained at the time that Respondent #1 believed increasing the rent would be appropriate because another person would be occupying the Property, regardless of the fact that the person is a minor child. Respondent #1 denied having suggested to Complainant, Tenant or Landlord that Tenant pay additional rent.

Ultimately, Landlord gave Tenant the key and Tenant has occupied the Property in accordance with the terms set forth in the Lease including the rental rate. Tenant testified that since moving into the Property, Landlord has continually harassed Tenant under the pretext of various property management related issues. For example, Tenant testified that Landlord required access to the Property to adjust the thermostat and accused Tenant of adjusting the thermostat which Tenant denies. Tenant also testified that Landlord asked if Tenant took packages addressed to Landlord that were delivered to the Property, which Tenant denies.

In the week following the move in, Respondent #1 testified that Landlord continued to reach out to Respondent #1 regarding various issues with Tenant and that Respondent #1 notified Landlord that Respondent #1's services were limited to the leasing transaction and did not extend to property management related issues. A few days later, Complainant notified Respondent #1, and Respondent #1's Agency, of Complainant's intention to file an ethics complaint "against [Respondent #1's] Agency" for violations of Articles 10 and 16 of the Code.

Subsequently, the Agency's Regional Vice President called Complainant to discuss the matter and sent a letter to Landlord terminating the Agency's relationship with Landlord.

Respondent #2 testified that Landlord has never communicated with Complainant regarding this matter or had any involvement with the transaction or events described above. Complainant testified that Complainant did not speak with Respondent #2, but that Complainant spoke with someone who identified themselves as Respondent #1's manager, who turned out to be the Office Manager for the office with which Respondent #1 is affiliated.

Conclusions of the hearing panel:

We, the members of the Hearing Panel in the above-referenced case, find the Respondent #1 violated Article 10 of the Code by participating in a plan to discriminate against Tenant based on Tenant's familial status. The evidence presented at the Hearing established that Respondent #1 assisted Landlord in Landlord's attempt to renegotiate the terms of the Lease based on the fact that Tenant's minor child would be residing at the Property by participating in a phone call with Landlord and Tenant wherein, according to Tenant's testimony, Respondent #1 suggested that Tenant increase the rent payable under the Lease.

We, the members of the Hearing Panel in the above-referenced case, find the Respondent #1 did not violate Article 16 of the Code. The evidence does not establish that Respondent #1 engaged in any practice or took any action inconsistent with an exclusive representation agreement that another Realtor had with a client. The evidence did not establish that Complainant had an exclusive representation agreement with Tenant. Further, Respondent #1 did not affirmatively reach out to or contact Tenant, rather Respondent #1 was on a private call with Landlord who placed Respondent #1 on speakerphone during a conversation Landlord was having with Tenant.

We, the members of the Hearing Panel in the above-referenced case, find the Respondent #2 did not violate Article 10 or 16 of the Code. The evidence establishes that Respondent #2 was not involved in or aware of the transaction or events that transpired as set forth in this decision.