

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

A Consumer ("Complainant") filed a complaint (the "Complaint") alleging that Respondents (individually "Respondent #1" and "Respondent #2" and, collectively the "Respondents"), violated Articles 1, 9, 12, and 17 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, Articles 12 and 17 were deleted for consideration. Respondent #2 served as the listing agent for a property located outside of Monroe County (the "Property") and Respondent #1 served as the buyer's agent for Complainant in her purchase of the Property. The Complaint and Complainant's testimony at a hearing before a panel of the GRAR Professional Standards Committee, focused on Respondents' alleged failures related to obtaining inspections of the septic system and water well on the Property.

Respondent #1, on behalf of Complainant, submitted an offer to the owner of the Property (the "Seller") to purchase the Property, which was accepted on the same day (the "Purchase Agreement"). The Purchase Agreement included an Addendum for Well and Septic System (the "Addendum") which provided that the Purchase Agreement was contingent upon a "Test for Potability of Well" and "Inspection of Septic System and Pumping of Septic Tank...." The Septic test was to be completed 30 days after occupancy. The Addendum provided "recommended water potability and volume and septic system inspection guidelines" which included, with respect to the Test for Potability that

"[t]he well water must be tested by a State-certified laboratory or local health authority in accordance with the latest, applicable local, State, HUD and EPA standards. Without limit, the results should indicate that the water was of a satisfactory bacteriological quality for drinking when collected and that the levels of lead and nitrate/nitrite in the water do not exceed the legal limits allowable in drinking water when collected."

The Addendum provided additional recommendations for the Septic Inspection based upon information obtained from the Monroe County Department of Health and specified that "more or less may be required as determined by individual property needs and system designs." The Addendum went on to say that "a professional contractor or engineer should be consulted" with respect to the Septic Inspection Recommendations. The recommended septic inspection items included: (1) Inspect Septic Tank(s) and Leach Field; (2) Inspect Distribution Box; (3) Inspect Internal Plumbing; (4) Check for Sewage Overflows or Discharges; (5) Is the House Occupied; and (6) Current complaint on file with Health Department?

After submitting the offer on the Property, on the same day, Complainant emailed Respondent #1 stating

"I want to make sure the [A]ddendum will be as we discussed. It s[sic] confusing that is says Monroe County. Remember I will be using EPA regulations as we discussed. I want the well and septic in working usable order. This has been in [sic] the family for many years and I m[sic] concerned what is covered up. They are saying they dont [sic] know anything about the septic so I m[sic] assuming all the items will be done. My parents had a septic and it failed at the distribution box and it was expensive to fix."

Respondent #2 testified that she, on behalf of the Seller, ordered a water test from the Department of Health of the County in which the Property was located. Respondent #2 did not make any specific request that the County conduct the testing in compliance with the recommendations included in the Addendum. Rather, Respondent #2 relied on the County to perform only those tests it required. Respondent #1 submitted into evidence an email from a Public Health Technician at the County Department of Health, attaching the test results and stating "water passed". Respondent #1 sent the test results to Complainant the same day and stated "wanted to make sure you saw we got the water test back and it passed." Complainant responded, "no, I hadn't [sic]...I would have liked to ask why it tasted so bad." Respondent #1 responded "So they test the water for E-coli and Coliform - two bacteria's[sic] so would probably have to do a lot more testing to see what else might be causing it not to taste good."

Complainant moved into the Property prior to closing on the purchase. Complainant testified that she continued to have concerns regarding the water given its taste and requested additional testing to comply with the recommendations in the Addendum, including a test for potability. The parties testified that Respondent #1 explained the only testing *required* by the Addendum was the minimal testing included in the County Department of Health test that was completed, which tested for E-Coli and Coliform. Respondent #1 indicated that any further water testing would be Complainant's responsibility. Eventually, Complainant ordered her own water test from a private laboratory and submitted into evidence a copy of the report generated from such tests (the "Private Lab Water Test"). Complainant testified that the Private Lab Water Test identified many contaminants in excess of acceptable limits for potable water per EPA standards. For example, sodium was detected at a volume of 663,000 ug/L and the standard EPA limit was indicated as 60,000 ug/L. In addition, methane was detected at a volume of 3900 mg/L and the standard EPA limit was indicated as 28.0 mg/L. Complainant testified that on one occasion, Respondent #2 told her directly that Respondent #2's son had a contaminated water well in the same County.

At the closing on Complainant's purchase of the Property, an escrow account was established pending the septic inspection which was not completed prior to closing because the occupancy requirements for such inspection were not satisfied. The septic inspection occurred approximately two (2) months after closing. Respondent #1 testified that she attended the inspection and that the contractor returned to the Property a week later, to pump the tank, check the baffles and re-cover the tank, but that Complainant did not allow the contractor to re-cover the tank. Complainant testified that the inspection did not include all of the items specified in the Addendum for septic inspection. Respondents testified that the septic inspection included all items required by the County. Complainant testified that Respondents refused to assist her to obtain the escrowed sums to complete the remaining recommended inspection items. Respondents testified that the parties' attorneys are responsible for handling that process and that the escrow is deposited with the attorney who represented Complainant in the purchase of the Property.

Complainant testified that she relied on Respondents to carry out the testing of the well water and septic system in accordance with the Addendum, that she had multiple conversations with Respondent #1 regarding her understanding of the required testing and that she expressed her concerns regarding the same to Respondent #1 before and after entering into the Purchase Agreement. Complainant testified that she had requested that Respondent #1 submit requests to use the septic escrow funds to complete the additional recommended tests from the Addendum and that Respondent #1 refused. Complainant testified that given the contaminated well water, she is unable to occupy the Property until expensive repairs are made to the well and that the Property's septic system will require expensive work as well as it is not compliant with applicable codes.

Respondent testified that she explained to Complainant that the Addendum contained recommendations only and that the only requirements for testing were those specifically required by the County. Respondent #1 testified that she was aware Complainant had expressed a desire for testing in compliance with the EPA, but that she does not know what that would entail. Respondents testified that they do not control the septic escrow and that Complainant should be communicating with her former attorney regarding the use of those funds. Respondents testified that they met with the Seller to discuss Complainant's concerns and her requests for additional testing and that the Seller refused to do any additional tests. Respondent #1 testified that she paid for the Private Lab Water Test herself in order to present the results to the Seller.

Conclusions of the hearing panel:

We, the members of the Hearing Panel in the above-referenced case, find the Respondent #1 violated Article 1 of the Code by failing to protect and promote the interests of her client, the Complainant. The evidence demonstrates that Respondent #1 failed to ensure that the well water and septic testing Complainant requested and expected was in fact complete. Respondent #1 was aware that Complainant expected the recommendations in the Addendum would be satisfied and failed to explain to Complainant that the testing would not include all such recommendations. Respondent #1 forwarded the water test results to Complainant via e-mail indicating that it "passed" without advising her to review the testing independently and without clarifying that it only tested for two contaminants and did not satisfy many of the recommendations from the Addendum.

We, the members of the Hearing Panel in the above-referenced case, find the Respondent #2 violated Article 1 of the Code in that she failed to be honest with all parties by stating that the tests required by the Addendum, in particular the water tests, were completed satisfactorily, despite knowing that the tests did not include all of the recommended testing set forth in the Addendum. Respondent #2 took responsibility for ordering the testing and did not request that such testing include the items identified in the Addendum, but did not explain that to the Seller or the Complainant.

We, the members of the Hearing Panel in the above-referenced case, find the Respondent #1 violated Article 9 of the Code by failing to explain the specific terms of the Purchase Agreement to Complainant. Standard of Practice 9-2 provides: "*When assisting or enabling a client or customer in establishing a contractual relationship (e.g. listing and representation agreements, purchase agreements, leases, etc.) electronically, REALTORS® shall make reasonable efforts to explain the nature and disclose the specific terms of the contractual relationship being established prior to it being agreed to by a contracting party.*" Respondent #1 failed to explain to Complainant that the Addendum did not explicitly *require* the recommendations for testing the well water and septic system included therein despite Complainant's repeated expression of concern regarding the same.

We, the members of the Hearing Panel in the above-referenced case, find the Respondent #2 did not violate Article 9 of the Code. The evidence does not establish that Respondent #2 failed to ensure that any agreement related to the transaction was in writing, in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties, nor does the evidence establish that copies of the relevant agreements were not furnished to the parties upon execution.

Recommendation for disciplinary action of Respondent #1: We recommend to the Board of Directors the following action:

- ☐ A letter of reprimand, with a copy to be placed in Respondent #1's file.
- ☐ A fine of \$500.00 (to be paid to GRAR within thirty (30) days of receipt of notice that the GRAR Board of Directors has approved this decision).
- ☐ Attend GRI-1 Ethics Education Course (7.5 Hours) in-person or online within one (1) year of receipt of this decision.

In addition, Respondent #1 shall pay a \$500.00 administrative processing fee to GRAR within thirty (30) days of receipt of notice that the GRAR Board of Directors has approved this decision.

Consequences for noncompliance with discipline: We recommend to the Board of Directors the following consequence for non-compliance with the discipline recommended above: a fine of \$1,000.00.

Recommendation for disciplinary action of Respondent #2: We recommend to the Board of Directors the following action:

- ☐ A letter of reprimand, with a copy to be placed in Respondent #2's file.
- ☐ A fine of \$250.00 (to be paid to GRAR within thirty (30) days of receipt of notice that the GRAR Board of Directors has approved this decision).
- ☐ Attend GRI-1 Ethics Education Course (7.5 Hours) in-person or online within one (1) year of receipt of this decision.

In addition, Respondent #2 shall pay a \$500.00 administrative processing fee to GRAR within thirty (30) days of receipt of notice that the GRAR Board of Directors has approved this decision.

Consequences for noncompliance with discipline: We recommend to the Board of Directors the following consequence for non-compliance with the discipline recommended above: a fine of \$1,000.00.