

Mishandling of Multiple Offers

Ms. Brown – The Complainant (originally represented Buyer #1)

Ms. Green – The Respondent (listing REALTOR®)

Buyer #1

Buyer #2

The complaint arose from a real estate transaction involving the Complainant, Ms. Brown (representing Buyer #1) and the Respondent, Ms. Green which occurred during the period from early June 2013 through the middle of July 2013. Initially Ms. Brown represented Buyer #1 (without a buyer agency contract) and Ms. Green was the listing REALTOR®. The property appeared on the MLS® System and was shown to Buyer #1 by Ms. Brown.

On behalf of Buyer #1, Ms. Brown submitted a total of three offers, none of which were accepted by the Vendor. The second offer of \$147,000 was submitted on June 18th and rejected on June 21st. The third offer of \$149,900 was signed on June 21st and submitted on June 22nd. On June 23rd, Ms. Green told Ms. Brown that an offer from another party (Buyer #2, signed June 20th) had been accepted on June 21st. Ms. Brown stated she was not aware of a multiple offer situation and would have advised her client accordingly if she had known.

On July 10, Ms. Brown asked the Respondent if all conditions of the accepted offer had been fulfilled in order to confirm that her client had lost the opportunity to purchase the property. She was told the property was confirmed sold. On July 19, after noticing the sold status on the Real Estate Board daily bulletin, Ms. Brown checked the property sale information with Service New Brunswick. The new property owner was listed as Buyer #1.

At the hearing, Buyer #1 stated that after his third offer was rejected because another offer had been accepted, he contacted Ms. Green to see if he had any chance to acquire the property. He was told the accepted offer was conditional. Through Ms. Green, he made a fourth offer, which was accepted when the previous accepted offer from Buyer #2 fell through. His statement was supported by his wife, who stated that she and her husband decided to contact Ms. Green after being told by Ms. Brown that the property was no longer available to them.

The Respondent, Ms. Green, testified that she had received offers from two purchasers for the property at the same time. She stated that she did not ask her client, the Vendor, if they wanted her to make all parties aware of the multiple offer situation. She did not notify Ms. Brown of the existence of the other offer, nor did she think she had to do so. Buyer #1 approached her in his efforts to obtain the property and she accommodated his request, acting in dual agency.

Findings of the Committee

The Committee accepted the evidence of the Complainant and the Respondent that a multiple offer situation existed on or about June 21st which was not communicated to all parties. It is apparent that Buyer #1's offer of \$147,000 written by Ms. Brown was still in effect when Buyer #2's offer was submitted. The Respondent, Ms. Green, did not ask the Vendor if they wanted to inform Buyer #1 of Buyer #2's offer and give Buyer #1 the opportunity to reconsider his offer. Doing so could have resulted in an increased sale price, to the Vendor's benefit. The Committee felt the Respondent, Ms. Green, did

not meet her obligations to her client as a result of her lack of communication regarding the status of the multiple offer situation. The issue is therefore whether Ms. Green met the requirements of the code in dealing fairly with all parties to the transaction.

After considering all of the evidence and the submissions of the parties, the Committee determined that Ms. Green was guilty of two (2) of the three charges, Sections 1 and 2, contained in the Notice of Hearing:

1. Failed to protect and promote the interests of her client while treating all parties to a transaction equitably;
2. Failed to protect and promote the interests of her client by misleading a party to the transaction.

The Committee determined that Ms. Green's actions and lack of communication in this multiple offer situation were misleading to one or more parties to the transaction and therefore constituted a breach of Article 3 of the REALTOR® Code.

Ms. Green was required to pay \$1,000 as a penalty for the violation in addition to \$2,000 as cost assessment and to complete a remedial session on the proper handling of multiple offers (with associated costs).

The Discipline Committee directed the Registrar to publish a summary of the decision, without names, in the NBREA newsletter and on the NBREA website.