

Professional Standards Update--Cooperating Broker's Compensation Specified on Deposit Receipt

REALTOR® A filed a written complaint against REALTOR® B, alleging violation of Article 16 of the Code of Ethics. It was referred to the Grievance Committee and after preliminary review, the Grievance Committee referred it to the Executive Officer with instructions to arrange a hearing before a Hearing Panel of the Professional Standards Committee. After following required procedures, including timely notices to all parties, a Hearing Panel was convened.

REALTOR® A stated to the Hearing Panel that he and REALTOR® B were both members of the Board MLS and that, as an MLS Participant, he was required to specify the amount of compensation he was offering on listings filed with the MLS. However, REALTOR® B had ignored this information as published by the MLS and had, on two separate occasions, brought REALTOR® A purchase agreements with copies of deposit receipts that provided for a different amount of subagency compensation to be payable to REALTOR® B. In following this practice, REALTOR® B was, in effect, presenting a demand for a subagency compensation greater than that which REALTOR® A, as the listing broker, had specified in the information filed with the Board's Multiple Listing Service. REALTOR® A also complained that the language of the deposit receipt was so phrased as to make presentation of the offer conditioned upon REALTOR® A's agreement to pay a larger subagency commission than he had offered through the MLS.

REALTOR® A said this practice by REALTOR® B created a dilemma for him as the listing broker of either not submitting the offer to the client or, alternatively, paying an amount of subagency compensation greater than he had offered through the MLS. REALTOR® B responded that he had a right to negotiate with REALTOR® A as to the subagency compensation he would receive for his work, and the amount he had put on the deposit receipt was the compensation for which he was willing to work. REALTOR® B said that REALTOR® A would have to make his own decision as to whether he would present the offer or not. The Hearing Panel's decision noted that REALTOR® B was indeed entitled to negotiate with REALTOR® A concerning subagency compensation but that such negotiation should be completed prior to the showing of the property by REALTOR® B.

The decision indicated that REALTOR® B was entitled to show property listed by REALTOR® A on the basis of the subagency agreement between them. If there was no agreement on the essential terms and conditions of such subagency, including compensation, there was no authority for REALTOR® B to show the property or to procure an offer to purchase. The panel's decision further advised that it was improper for REALTOR® B to follow a procedure of inserting the amount of subagency compensation to be paid by the listing broker on any document provided to a buyer or a seller, because this is properly a matter to be decided by the listing and cooperating brokers at the time the offer of subagency is offered and accepted; and that preconditioning an offer to purchase on the listing broker's acceptance of a subagency commission greater than he had offered was a practice inconsistent with respect for the agency of the listing broker.

REALTOR® B was found in violation of Article 16.