nova scotia real estate COMMISSION

Discipline Newsletter

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About this newsletter

As per the Commission's discipline publication threshold, Industry Members who receive a fine in excess of $500 have their names published in the newsletter that is sent out to all Industry Members. The names are also published in the newsletter that appears on the Commission website for a period of 30 days.

About the Commission's discipline process

The Nova Scotia Real Estate Commission is responsible for the administration of the Real Estate Trading Act and the Commission Bylaw. Part of that responsibility is dealing with public complaints about a brokerage or an industry member.

Complaints are investigated by the Commission's compliance staff. The compliance staff prepares an investigation report for each case, which is then reviewed by the registrar. The registrar determines whether there was a breach of the Act or Bylaw and in cases where there was a breach, recommends charges and penalties. The cases are then presented to the Complaint Review Committee who may reject, amend or approve the registrar's decision.

After the committee reviews the cases and makes any adjustments to the proposed charges, the industry member is sent a statement of allegations and a settlement agreement. If the industry member accepts a settlement agreement, the industry member must satisfy the penalty imposed.

If the industry member does not agree with a settlement agreement then the matter is referred to a full discipline hearing. After the Commission's and witnesses' evidence has been examined and cross examined at a hearing, the Hearing Panel decides whether the industry member is guilty of any of the charges brought forward at the hearing. The charges may include those proposed in the settlement agreement, but are not necessarily limited to those charges. If they are found guilty of any of the charges there is then an opportunity for both the Commission and the industry member to speak to appropriate penalties.

An industry member has the right to appeal the decision of the Hearing Panel to the Nova Scotia Court of Appeal, should they wish to and if there are grounds to do so.

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Failure to discover facts and poor paperwork

Case overview

The Commission received a complaint from first-time home buyers alleging their salesperson failed to provide them with a copy of the PCDS as required in the Agreement of Purchase and Sale. The buyers stated they didn't know the document existed until it was delivered to them some 10 days after closing. When they received the PCDS, the form disclosed water problems in the basement. Two days later, the basement flooded with a foot and a half of water. The buyers said if they had received the PCDS when they were supposed to and knew of the water problems, they would have withdrawn their offer. During the investigation, the compliance investigator determined not only was the PCDS delivered after closing, but the transaction paperwork was riddled with errors including:

- The price was changed three times in the agreement of purchase and sale (APS), but the only signature acknowledging the change was the buyers' industry member.
- The chattels were listed under additional terms and conditions, not under fixtures/chattels/leased equipment.
- The agency section stated that the buyers' salesperson was in an agency relationship with the seller, despite the fact that the buyer and the seller had independent representation.
- Neither the offer nor the counter offer adequately addressed the leased hot water heater.
- The counter offer signed by the seller in New Brunswick was witnessed by the buyers' salesperson in Nova Scotia.
- The APS stated that PCDS was to be provided within 48 hours of acceptance.

Results

The salespeople violated By-law 702 Article 11 for poor record-keeping and By-law 702, article 10 for not having a signed PCDS. Their brokers violated Bylaw 704 for failing to provide an adequate level of brokerage supervision.

Penalty

Both salespeople were fined $400 for violating Bylaw 702 Article 10 and $400 for violating Bylaw Article 11.

Both brokers were fined $500 for violating Bylaw Article 704.

Obligation to discover facts

Bylaw 702, Article 10 states "The industry member has an obligation to discover facts pertaining to every property for which the industry member accepts an agency which a reasonably prudent industry member would discover in order to fulfil the obligation to avoid error, misrepresentation, or concealment of pertinent facts. The industry member shall disclose, in writing whenever possible, any known material latent defects to their clients or other industry members involved in a transaction."

In this case, the buyers' salesperson had an obligation to discover facts about the property and the sellers' salesperson had an obligation to disclose all known latent defects. Delivering and receiving the PCDS within the terms of the agreement was part of that obligation.

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Negotiating an expired agreement

An expired agreement is a dead agreement

If a date in a contract needs to be extended, whether it is financing, inspection, duration, etc. the extension must be executed, in writing, before the original deadline expires. The reason for this is once a contract expires, it ceases to exist. This is universal in contract law. For example, when a labour contract expires, neither employer nor employee can revisit the contract and make changes to the benefits and wages that were paid out under the terms of the contract. Likewise, when a cell phone contract expires, neither the provider nor the subscriber can go back request modifications.

In this case, the salespeople continued negotiating long past the termination date. In an agreement of purchase and sale, the closing is the expiry date. Either the closing is extended through an amendment, the property changes hands or the transaction terminates; without an amendment there can be no further negotiations. In this case, if both parties wished to continue negotiating, a new agreement was required.

Case overview

The Commission received a written complaint from a buyer who alleged that the listing salesperson failed to notify their seller clients of the buyer's dissatisfaction with the well-water test within the required time frame. The investigation into the complaint revealed that the APS was amended to address the well-water issue with the clause "Seller agrees to rectify volume and bacteria problems with the well prior to closing." The sellers accepted the amendment, but then learned a new well had to be drilled to remedy the situation. The seller refused to drill a new well unless the buyers shared half the costs; however the APS was never amended. The buyer refused to share costs and requested the transaction be terminated. The buyer's salesperson provided written notice of termination one day before the closing date. Despite the termination, both parties continued verbal negotiations as if the transaction was still in play for an additional two months, at which point the buyer requested the return of their deposit and the seller refused. The buyer then submitted a complaint to the Commission. The compliance investigator also noted numerous instances of poor paperwork in the transaction file, including vague clauses like "All appliances" in the fixtures and chattels clause and incoherent clauses like "permission of plot plan if available" in the additional terms and conditions clause.

Results

The salespeople violated Bylaw 702, article 11 for failing to ensure that agreements were in writing, and clearly outlined the terms and conditions. Their brokers violated Bylaw 704 for failing to adequately supervise the activities of the industry members in their employ.

Penalty

Both salespeople were fined $400 for violating Bylaw 702, article 11.

Both brokers were fined $500 for violating Bylaw 704.

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Unlicensed trading, failure to supervise

No CPE means no trading

All industry members are required to complete mandatory and elective courses.

NSAR members can go to www.realtorlink.ca to view course status and register online. Non-members can call NSAR at 468-2515 or (800) 344-2001 to verify course status or to register.

If you do not complete your course requirements by June 30th, your licence is suspended until you do. As of July 1st, all your brokerage agreements must be assigned to other industry members at the brokerage, you must take down all your advertising, including websites and signage, and cease all trading activities.

Brokers and their industry members are responsible for ensuring continuing education requirements are completed by June 30th and that any industry member who does not have their courses completed, ceases trading on July 1st.

Case overview 1

A written complaint was received from a broker alleging that a salesperson at another brokerage was trading in real estate without a licence due to failure to complete mandatory CPE courses. When the Commission investigated the case, the investigator discovered that the salesperson continued to negotiate a pending transaction while unlicensed and that the salesperson's broker failed to ensure only licensed people traded in real estate at the brokerage.

Results

The salesperson violated Act Section 4 (1) for unlicensed trading and the broker violated Bylaw 704 (f) for failing to ensure the salesperson was licensed.

Penalty

The salesperson was fined $500 for violating Act Section 4 (1).

The broker was fined $1000 for violating Bylaw 704 (f).

About settlement agreements

The first option for most industry members facing disciplinary action is a settlement agreement. In the majority of cases, the Registrar writes a proposed settlement agreement, which accompanies a statement of allegations (charge letter), that outlines the alleged violations and corresponding penalty. The settlement agreement, along with the investigation file, is presented to the Complaint Review Committee. The committee may approve, reject, or amend the settlement agreement.

If the committee accepts or amends the settlement agreement, the industry member can accept the agreement and satisfy the penalty or reject it and go to hearing. If the Complaint Review Committee rejects the settlement agreement, it may recommend that the matter be dealt with through a hearing.

Unprofessional conduct

Appointments are mandatory

Any time an industry member enters a property, an appointment must be made with the listing brokerage, or as instructed by the listing brokerage.

While it may be tempting, especially when a property is vacant like the one in this case, to save time and enter the property without setting up an appointment, it is prohibited.

Entering a property without permission is considered unprofessional conduct under the Act and the Bylaw, and is also trespassing, which is a summary offence under the Protection of Property Act.

Case overview 3

The Commission received a complaint from sellers about the salesperson who represented the buyer on the sale of their property. The seller's alleged the buyer's salesperson entered their property without their consent prior to closing and permitted the buyers to have access to the property to store a trailer, deliver a fridge, and install a garage door opener. They further alleged that there was damage done to the property by the buyers.

The compliance investigator found the industry member did allow entry into the home prior to closing on two occasions, during which, the alleged activity occurred. The investigator also discovered the industry member did not disclose the buyer was a family member.

Results

The salesperson violated Bylaw 702, Article 35 twice for letting the buyer into the house without the seller's knowledge; and violated Bylaw 702, Article 21 for failing to disclose the buyer was a family member.

Penalty

The salesperson was fined $750 for each violation of Bylaw 702, Article 35 ($1500) and $400 for violating Bylaw 702, Article 21.

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Advertising a property without permission, providing false information during an investigation

Brokerage agreements belong to the brokerage, not the industry member

When an industry member signs a buyer or a seller into a brokerage agreement, they are acting as agents of their brokers (hence the term "real estate agent"). The brokerage agreement is a contract between the consumer and the brokerage.

Because the contract is between the consumer and the brokerage, industry members are not parties to the contracts. If an industry member leaves a brokerage, they can take listings with them only with the written permission of the brokerage that holds the listings and the seller.

Likewise, because the industry member is not a party to brokerage contracts, an industry member has no right to expect remuneration from any source but the brokerage with which they are licensed.

The Commission received a written complaint from sellers about the conduct of the salesperson that listed their property. While the property was listed with the salesperson's brokerage, the salesperson transferred to a different brokerage. The sellers alleged the salesperson pressured them to move their listing to the new brokerage. The sellers chose to terminate the listing, as per the brokerage's policy when an industry member leaves the brokerage, and list with an unrelated brokerage. A week after the property was relisted, the sellers received a flyer in the mail showing their property listed by their former salesperson at the salesperson's new brokerage.

When the Commission investigated the complaint, the compliance investigator found the salesperson did advertise the sellers' property under the salesperson's new brokerage after the listing was terminated. During the investigation, the salesperson blamed the Canada Post strike, however the strike was over before the flyer was even printed and it still does not explain the property being advertised with a brokerage that never held the listing agreement. The salesperson also provided false information to the Commission during the course of the investigation.

Results

The salesperson violated Bylaw 709 for advertising a property without the sellers' permission; and Bylaw 816 for providing false information during an investigation.

Penalty

The salesperson was fined $400 for violating Bylaw 709 and $400 for violating Bylaw 816.

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Misleading advertising

What is misleading advertising?

The Commission receives complaints about advertisements that are perceived as misleading. In determining whether or not an advertisement is false or misleading, the Commission considers both the literal meaning of the advertisement and the general impression it creates. This is the same approach as that taken by the Courts and other law-enforcement organizations. An advertisement is considered misleading when it makes a representation or claim that is false or misleading in a material respect.

An advertisement may be considered misleading even if it is not demonstrated that a consumer was actually misled. It is only necessary to show that the advertisement is capable of misleading a reasonable consumer.

Case overview 1

A written complaint was received from a salesperson regarding the content of an advertorial published by a broker in a real estate publication. In the complaint, the salesperson alleged that the advertorial publicly discredited competitors by using derogatory and inflammatory language. The salesperson also alleged the advertorial discriminated against non-traditional business models.

Results

The advertorial contained false information, which violated Bylaw 702, Article 34.

Penalty

The broker was fined $500 for violating By-law 702, Article 34

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Failure to disclose interest, failure to keep broker informed, poor paperwork and providing misleading information during an investigation

Case overview

The Commission received a written complaint from buyers regarding the conduct of a salesperson in the attempted purchase of a property. The buyers claimed the salesperson acted unprofessionally, and mislead them in their attempted purchase of a house. The buyers also alleged the salesperson failed to disclose a financial interest in the property. The property was initially listed with the salesperson's brokerage, but the salesperson terminated the listing. The buyers alleged they were not told it was a private deal until the offer was prepared. The deal fell, the salesperson refused to release the deposit, and the buyers had to go to court to get the deposit back.

When the complaint was investigated, the compliance investigator found that the salesperson did not disclose their interest in the property; the paperwork was very poorly prepared; and the salesperson did not keep their broker updated on his activities, which included cancelling the listing after entering into an agreement of purchase and sale. The salesperson also provided misleading information during the course of the investigation.

Results

The salesperson violated Bylaw 702, Article 21 for not disclosing a financial interest in the property; Bylaw 702, Article 11 for poor paperwork; Bylaw 705(d) for failing to keep the broker informed; and Bylaw 816 for providing misleading information during the course if the investigation.

Penalty

The salesperson was fined $500 violating Bylaw 702, Article 21; $500 for violating Bylaw 702, Article 11; $500 for violating By-law 705 (d); and $750 for violating Bylaw 816.

Interest must be disclosed

Bylaw 702, Article 21 states "The industry member shall not present an offer or acquire an interest in property either directly or indirectly for themselves, any member of their immediate family or any entity in which the industry member has a financial interest, without making the industry member's status as a licensed person and their intent for the purchase known to the seller in writing..."

A failure to comply with Bylaw 703, Article 21 is easily proven: either the disclosure is made in writing, which can be produced, or the disclosure was not made.

Keep your broker informed

Industry members trade on behalf of the brokerage with which they are licensed. As such, it is necessary to keep the broker apprised of all trading activity. In this case, the salesperson cancelled the listing and engaged in a private trade without the broker's knowledge or permission.

Do not lie, mislead, or conceal information when under investigation

Bylaw 816 states "No industry member shall make or permit to be made any false or misleading statement in any investigational information required to be furnished under the Act, its Regulations or the Bylaw."

If an industry member provides misleading or false information during the course of the investigation, the industry member can be charged with violating Bylaw 816 in addition to any other charges they may face. In this case, had the industry member been truthful during the investigation, they would not have received the $750 fine and stayed below the publication threshold.

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Lying about offers

The difference between negotiating and misleading

In this case, the salesperson intentionally mislead the buyers into believing there was a back-up offer on the property when none existed. This effectively prevented the buyers from seeking an amendment to remedy issues revealed in the property inspection. While this was beneficial to the salesperson's seller clients, the salesperson telling another industry member with interested buyers that an accepted offer was in place when it wasn't, was definitely not in the sellers' best interest, soliciting the offer was.

Industry members are prohibited from making false and misleading statements. Industry members are also required to treat all parties to a transaction fairly. If you know another offer is being presented, you can say another offer is being presented. The statement is true and treats all parties fairly. You cannot imply that the offer will be accepted, nor can you, as in this case, invent an offer that doesn't exist.

Case overview 2

Buyers submitted a complaint about the salesperson that represented the seller on the purchase of their house. In the complaint, the buyers alleged that the salesperson lied to their industry member about the existence of a back-up offer. When the property was inspected, the inspection revealed the roof needed to be replaced, but because the buyers' salesperson was told by the seller's salesperson that there was a back up offer, they did not want to risk the seller terminating the agreement if they sought an amendment. In a later conversation with one of the sellers, the seller said there were no other offers on the property in the six weeks it was on the market.

When the complaint was investigated, the compliance investigator found that the salesperson lied to the buyer's salesperson about the existence of a back-up offer. The investigation also revealed the salesperson lied to another salesperson about the existence of an accepted offer, deterring the second buyer from submitting an offer. The salesperson said the property was subject to an accepted offer when the counter offer wasn't accepted until the following day.

Results

In their review of the Registrar's decision, the Complaint Review Committee took the salesperson's extensive licensing history and brokerage ownership into account. The committee found the salesperson violated Bylaw 702, Article 34 twice for lying about a back-up offer and an accepted offer; and violated Bylaw 702, Article 2 for failure to treat all parties to a transaction fairly.

Penalty

The salesperson was fined $750.00 for each violation of Bylaw 702, Article 34 ($1500) and fined $500.00 for violating Bylaw 702, Article 2.

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Poor paperwork, poor understanding of agency, poor handling of a multiple offer

When does an offer become a back-up offer?

An offer submitted on a property subject to an accepted agreement, is prepared and submitted just like any other offer. If the sellers decide to accept the offer as a backup offer, the sellers' industry member prepares a counter offer stating that the offer is conditional upon the first offer not succeeding.

One signature when two are required is a verbal offer

In this case, a counter offer contained the clause "The signature of [one of the sellers] will be obtained within 24 hours of an accepted offer." This is, in essence, a verbal offer because signatures of both sellers are required for a contract to be valid. Aside from the legislative requirement to have agreements in writing, a clause like this is especially problematic because what happens if the signature cannot be obtained within the time allotted? Handled correctly, the offer is amended to provide sufficient time to obtain the seller's signature.

Case overview

The Commission received a written complaint from buyers who felt they were treated unfairly by the listing real-estate team for a property they purchased. The buyers submitted their first offer using the real-estate team. They were told that they had presented one offer to the sellers from buyers, which they had also prepared under transaction brokerage, and which had to be dealt with first before they could present the buyers' offer. The first offer was countered, and expired. The buyers sought independent representation and presented a second offer, which was accepted. When the complaint was investigated, the following mistakes were identified:

- The team entered into a transaction brokerage with buyers without having a signed Buyer Designated Brokerage Agreement.
- The team, which had represented the sellers for four months, entered into transaction brokerage with buyers with whom they had no previous relationship. This was inappropriate because of the lack of an existing agency relationship with the buyers. The team could not act or be perceived to act as an impartial facilitator.
- The paperwork contained a number of mistakes, including missing signatures, vague clauses and initials.
- One offer prepared on the property included the words "Back Up offer" in two places, but no formal clause to that effect.
- One counter offer contained the clause "The signature of [one of the sellers] will be obtained within 24 hours of an accepted offer."

Results

The team lead violated Bylaw 702, Article 2 for not treating all parties to the transaction fairly; Bylaw 702, Article 3 for entering into transaction brokerage where it was inappropriate to do so; and violated Bylaw 702, Article 11 for poor paperwork.

One of the team members violated Bylaw 702, Article 2, for not treating all parties to the transaction fairly; and Bylaw 702, Article 3 for entering into a transaction brokerage without having a Buyer Designated Brokerage Agreement signed.

The team's broker violated Bylaw 705 (b) and (c) for failure to supervise.

Penalty

The team lead was fined $500 for each violation ($1500).

The team member was fined $500 for each violation ($1000).

The broker was fined $500.

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Brokerage audits—strike three and four

Needs improvement

The following issues are commonly identified in needs-improvement audit findings:

Poor paperwork

Vague clauses

Inappropriate cash backs

Missing paperwork (Bylaw 621 lists the requirements)

No terminations for fallen deals

Trust funds released without written authority

Transaction brokerage where inappropriate

Failure to disclose licensed status and intent

Audit overview

Every year, the Commission compliance auditors conduct yearly trust audits on each brokerage in Nova Scotia. In addition to the trust audits, each brokerage is subject to a brokerage and trust audit every three years. At the end of an audit, the compliance auditors may meet with the broker to discuss any problem areas identified and address any questions the broker may have. Broker participation in an audit meeting is optional; however, the Commission strongly recommends brokers attend. This is a broker's opportunity to address problem areas, ask questions, and discuss ways they can improve their audit results in the future. The compliance auditors follow up with a formal audit report, which reiterates their findings during the audit. Audits results fall in one of three categories: very good, good, and needs improvement. Any brokerage that receives three consecutive needs-improvement audits is subject to disciplinary action.

Three consecutive needs-improvement audits

Two brokers were fined $500 for three consecutive needs-improvement audits.

Four consecutive needs-improvement audits

The broker was charged with violating By-law 704 (d) and fined $1000.