

CASE INTERPRETATIONS RELATED TO ARTICLE 14:

Case #14-1: Establishing Procedure to be Followed in Handling Complaints (Revised Case #15-1 May, 1988. Transferred to Article 14 November, 1994. Revised November, 1996. Revised November, 2001.)

A Board of REALTORS® received a complaint from REALTOR® A's client charging REALTOR® A with a violation of Article 1 of the Code of Ethics. The complaint was referred to the Chairperson of the Board's Grievance Committee, who sent a copy of it to REALTOR® A with a request that he respond and provide a specific document about the matter to the Grievance Committee for its preliminary review.

REALTOR® A responded with a denial of the charge, and a statement that he would appear at any hearing on the appointed date and would, at that time, present all pertinent facts. He went on to indicate that on the advice of legal counsel he was unwilling to place the requested document in the hands of the Grievance Committee in advance of any hearing.

The Grievance Committee then initiated its own complaint charging REALTOR® A with a violation of Article 14 for refusing to place the requested document before a proper tribunal.

A hearing of the Grievance Committee's complaint was held before a Hearing Panel of the Professional Standards Committee. At the hearing, REALTOR® A again stated that it was his intention to respond specifically and factually to the charge of violating Article 1 if the complaint came before an ethics Hearing Panel and at that time he would submit all pertinent facts, including the document in question.

It was the conclusion of the Hearing Panel that REALTOR® A's defense against the charge of violating Article 14 was not valid; and that the Grievance Committee could require advance submission of specific documents to the Grievance Committee based on the Board's professional standards procedures which authorized the Grievance Committee to request specific documents to enable the Grievance Committee to make determinations whether complaints warranted hearing. The panel found REALTOR® A in violation of Article 14 and directed him to give the requested documentation to the Grievance Committee in connection with its review of the charge of violating Article 1.

Case #14-2: Refusal to Submit Pertinent Facts (Revised Case #15-2 May, 1988. Transferred to Article 14 November, 1994.)

When REALTOR® A was charged with a violation of the Code of Ethics, he was notified of the charge and directed to attend a hearing before a panel of the Professional Standards Committee of the Board.

At the hearing, the complainant formally presented the charge and a considerable body of evidence to support it. Members of the panel questioned REALTOR® A on specific points. To each question he responded that he was not guilty of the charge, but that specific answers to the questions put to him could conceivably do him an injustice, and that he felt that he should not be required to answer questions in a situation that was unfair to him.

Further attempts to question REALTOR® A met with similar responses. The Chairperson of the Hearing Panel advised REALTOR® A that, in light of his refusal to answer questions directed to him, the complaint was being amended to include a charge of a violation of Article 14. The Chairperson asked REALTOR® A if he wished to proceed with the hearing, or if he preferred to have the hearing postponed to a later date to provide him with an opportunity to prepare a defense against the additional charge. The Chairperson also reminded REALTOR® A that he was not before a court of law but a Committee of the Board in which his membership was based wholly upon his willingness to abide by its rules, which did not provide for a "Fifth Amendment" refuge from proper questions by members of the Hearing Panel.

REALTOR® A requested a continuance to prepare his defense against the amended complaint that now included an alleged violation of Article 14. The hearing was adjourned to a date certain to enable REALTOR® A to prepare his defense to the additional charge.

Case #14-3: Submission of Pertinent Facts

(Revised Case #15-3 May, 1988. Transferred to Article 14 November, 1994.)

Buyer A filed a complaint against REALTOR® B, the listing broker, involving a property purchased earlier by Buyer A.

REALTOR® B was notified of the complaint, directed to be present at a hearing, and requested to present to a Hearing Panel of the Board's Professional Standards Committee all pertinent facts relating to the transaction. REALTOR® B's response was a statement that he would refuse to submit any information in the matter to a Hearing Panel and would not attend the scheduled hearing, on the grounds that the complaint itself was not justified.

Explaining his position, REALTOR® B stated that his participation in the transaction was exclusively as the agent of the seller; that he had not been representing the buyer; and hence, could not be subject to a complaint by the buyer for simply transmitting information on behalf of the seller.

All of his statements concerning the property, REALTOR® B said, were based on information supplied to him by his client, the seller. Any error in this information, he contended, might well provide the basis for a lawsuit between the buyer and seller. As the agent of the seller, he felt that he was not answerable to the buyer for having done no more than transmit information provided to him by the seller.

REALTOR® B was advised by the Board that his reasoning was incorrect; that he was obligated by Article 14 to submit pertinent facts to a Hearing Panel of the Board's Professional Standards Committee and to participate in the hearing. REALTOR® B agreed to comply, and a hearing on the complaint was held.