

## CASE INTERPRETATIONS RELATED TO ARTICLE 17:

### Case #17-1: Obligation to Submit to Arbitration

(Revised Case #14-2 May, 1988. Transferred to Article 17 November, 1994. Revised November, 1995. Revised November, 2001.)

REALTOR® A and REALTOR® B had been engaged in a cooperative transaction that resulted in a dispute regarding entitlement to compensation. Rather than requesting arbitration before the Board of REALTORS®, REALTOR® A filed suit against REALTOR® B for payment of the compensation he felt REALTOR® B owed him. Upon receiving notification of the lawsuit, REALTOR® B filed a request for arbitration with the Board, which was reviewed by the Grievance Committee and found to be a mandatory arbitration situation. REALTOR® A was advised of the Grievance Committee's decision, but refused to withdraw from the lawsuit. Thereupon, REALTOR® B filed a complaint with the Board charging a violation of Article 17 as supported by Standard of Practice 17-1.

REALTOR® A was directed to be present at a hearing on the complaint before the Board of Directors. Evidence that REALTOR® B had sought REALTOR® A's agreement to submit the dispute to arbitration was presented at the hearing. REALTOR® A defended his action in filing the suit and refusing to submit to arbitration by asserting that under laws of the state, the Board of REALTORS® had no authority to bar his access to the courts or to require him to arbitrate his dispute with REALTOR® B.

The Board of Directors concluded that REALTOR® A was correct as to his legal right and as to the Board's lack of any right to prevent him from filing a suit. It was pointed out to REALTOR® A, however, that the Board of REALTORS® is a voluntary organization, whose members accept certain specified obligations with respect to their relations with other REALTORS®, and that if he wished to continue as a member of the Board he would be obliged to adhere to the Board's requirements as to arbitration.

Because REALTOR® A would not withdraw the litigation, the Board of Directors concluded that REALTOR® A was in violation of Article 17 for refusing to arbitrate in a mandatory arbitration situation. However, it was noted that if REALTOR® A had filed litigation against REALTOR® B, and had REALTOR® B then requested arbitration with the Grievance Committee determining that an arbitrable issue of a mandatory nature existed, REALTOR® B might have successfully petitioned the court to remand the matter to the Board for arbitration, and there would have been no finding of a violation of Article 17 since the Board's arbitration process would have been ultimately complied with.

### Case #17-2: Dispute Between REALTORS® in Different Boards

(Revised Case #14-6 May, 1988. Transferred to Article 17 November, 1994. Revised November, 1995.)

REALTOR® A cooperated in the sale of a commercial property with REALTOR® B, the listing broker. REALTOR® A is a member of the XYZ Board of REALTORS®, and his office is located in the XYZ Board. Both the property and REALTOR® B's office are located within the jurisdiction of the ABC Board of REALTORS® where REALTOR® B is a member. A dispute arose between REALTORS® A and B over the division of the commission.

REALTOR® A filed a request for arbitration with the Professional Standards Committee of his Board. The President of the Board, when advised of the contractual dispute, subsequent to the Grievance Committee finding the matter arbitrable and of a mandatory nature, notified the President of REALTOR® B's Board and requested interboard arbitration in accordance with Article 17 of the Code of Ethics. The arbitration request was brought before the Grievance Committee of REALTOR® B's Board which also determined that the dispute was arbitrable and of a mandatory nature.

One week before being notified of his Grievance Committee's decision, REALTOR® B filed suit against REALTOR® A. The Board of Directors of the ABC Board notified REALTOR® B to appear and answer to a charge of violation of Article 17 when REALTOR® B did not withdraw the suit subsequent to being informed that both Grievance Committees had found the issue arbitrable and mandatory.

REALTOR® B described his contractual dispute to the Directors and stated that he knew REALTOR® A had requested arbitration because he had received a copy of the request. REALTOR® B maintained that he had filed suit because REALTOR® A was in another Board's jurisdiction and he did not think anything would come of the request since he, REALTOR® B, was not a member of the XYZ Board.

REALTOR® B was advised that since both Grievance Committees had determined the matter was arbitrable and mandatory that interboard arbitration was being scheduled to hear the dispute. The Board of Directors concluded that his action in filing suit was not in itself in violation of Article 17 but advised REALTOR® B that if he failed to withdraw from the suit and participate in the interboard arbitration, he could be found in violation of Article 17.

**Case #17-3: Dispute Between REALTORS® of Different Boards** (Reaffirmed Case #14-7 May, 1988. Transferred to Article 17 November, 1994.)

REALTOR® A, the listing broker and a member of the X Board of REALTORS®, and REALTOR® B, the cooperating broker and a member of the Y Board of REALTORS®, disagreed as to whether REALTOR® B should participate in a commission on a sale. The property was located within the jurisdiction of REALTOR® A's Board, and REALTOR® A proposed that the dispute be submitted for arbitration within his Board, the X Board of REALTORS®. REALTOR® B agreed, and appeared before an arbitration panel of the Professional Standards Committee of the X Board of REALTORS® to present evidence in support of his view that he was entitled to participate in the commission. The arbitration panel of the X Board of REALTORS® found in favor of REALTOR® A.

REALTOR® B then requested his Board, the Y Board of REALTORS®, to contact the X Board of REALTORS® for the purpose of arranging interboard arbitration as provided for in Article 17 of the Code of Ethics. The Y Board of REALTORS® refused, pointing out that REALTOR® B had voluntarily accepted the proposal to have the matter arbitrated by the X Board of REALTORS®; that he had agreed to be bound by the Hearing Panel's decision; had participated in the arbitration proceeding; and having done so, he was not, following an adverse decision, entitled to initiate another arbitration hearing.

**Case #17-4: Dispute Involving REALTOR® Holding Membership in Two Boards** (Revised Case #14-8 May, 1988. Revised and transferred to Article 17 November, 1994.)

REALTORS® A and B, disputants in an arbitrable issue, both belonged to the X Board of REALTORS®, a large Board in the central city of a metropolitan area. REALTOR® B also maintained a branch office in a nearby suburb and was also a member of the Board having jurisdiction in that area, the Y Board of REALTORS®.

REALTOR® A filed a written request with the X Board of REALTORS® for arbitration. REALTOR® B was notified and advised of the date of the hearing.

REALTOR® B replied that because he considered himself primarily a member of the Y Board of REALTORS®, he would proceed through the Y Board of REALTORS® and would request interboard arbitration as provided for in Article 17 of the Code of Ethics.

Upon consideration by the Board of Directors of the X Board of REALTORS®, the request for interboard arbitration was refused. Regardless of which of the two Boards REALTOR® B considered to be his primary Board, he was a member of the X Board. Since both parties to the dispute were members of the X Board, there was no need for interboard arbitration and the matter was arbitrated by the X Board.

**Case #17-5: Time of Dispute a Determining Factor as to Arbitration** (Revised Case #14-10 May, 1988. Transferred to Article 17 November, 1994.)

REALTOR® A belonged to an All-REALTOR® Board (one in which all nonprincipal brokers and salespersons as well as principals are eligible for REALTOR® membership). Salesperson B had been a REALTOR® for a number of years and had been associated as an independent contractor with REALTOR® A during that time. Salesman B showed a property to Prospect C, who subsequently purchased the property through Salesman D, who also was affiliated with REALTOR® A. Salesman D was also a REALTOR® Member of the Board.

There was considerable dispute over the facts of the situation, but REALTOR® A finally paid the sales commission to Salesman D but admitted that the written office policies did not precisely cover the circumstances. Salesman B demanded a share of the commission and, upon REALTOR® A's refusal to pay it to him, transferred his license to REALTOR® E's firm.

REALTOR® E and Salesman B joined in a request for arbitration of the dispute with REALTOR® A stating that Article 17 required the arbitration of disputes between REALTORS® associated with different firms.

REALTOR® A refused to arbitrate on the basis that the dispute had arisen while he and Salesman B were associated with the same firm and that it was an internal matter which he was not required to arbitrate.

The matter was referred to the Board of Directors, consistent with the Board's Code of Ethics and Arbitration Manual. After a hearing, the Board of Directors ruled that the deciding factor was the relationship between the REALTORS® at the time the dispute arose rather than at the time the demand for arbitration was made. Therefore, REALTOR® A was not required to arbitrate the matter and was not in violation of Article 17.

**Case #17-6: Request for Arbitration Expenses** (Reaffirmed Case #14-11 May, 1988. Transferred to Article 17 November, 1994.)

REALTOR® A, the listing broker, and REALTOR® B, a cooperating broker, engaged in a heated dispute as to which REALTOR® was the procuring cause of a sale and, therefore, entitled to the commission. Finding that they could not resolve the matter themselves, they agreed to arbitrate in accordance with Article 17 of the Code of Ethics.

REALTOR® A initiated the request for arbitration with a letter to the Board; the letter was received and reviewed by the Grievance Committee which agreed that it was an arbitrable matter. The case was sent on to the Professional Standards Committee for a hearing.

The President of the Board, consistent with the Board's Code of Ethics and Arbitration Manual, appointed a five-member Hearing Panel to hear the case. The proper forms agreeing to the arbitration were sent to both REALTORS®, each signed his agreement and returned it to the Secretary. Prior to the date set for the hearing, REALTOR® A learned that REALTOR® B had practiced law before he entered the real estate business. REALTOR® A then decided that he would be at a disadvantage in presenting his case to the Hearing Panel without an attorney due to the legal background of REALTOR® B. REALTOR® A sent in an amended arbitration request in which he asked that he be awarded the commission and attorney's fees and any other administrative expenses that he might incur in the presentation of his case before the Hearing Panel. The Chairperson accepted the amended complaint as part of the case and mailed REALTOR® B a copy.

The case was set and a hearing was held at which REALTOR® A appeared with his attorney and a court reporter. REALTOR® B acted as his own attorney. The Hearing Panel had the Board's attorney and a secretary with a tape recorder present. After giving both parties the opportunity to present their case, the Hearing Panel adjourned the hearing and went into executive session to reach a decision.

It was the opinion of the Hearing Panel that the arbitration process is provided to all REALTORS® and REALTOR-ASSOCIATE'S by the Board to avoid any unnecessary expenses. The hiring of an attorney was REALTOR® A's own decision, not required by Article 17 of the Code of Ethics, the Hearing Panel, the Code of Ethics and Arbitration Manual, or the Board of REALTORS®. The Hearing Panel decided the commission dispute based strictly on the merits of the case presented. The Hearing Panel disallowed the request by REALTOR® A that he be awarded attorney's fees or other administrative expenses.

**Case #17-7: REALTOR® Not Precluded from Filing Complaint with State Real Estate Regulatory Agency** (Revised Case #14-12 May, 1988.

Transferred to Article 17 November, 1994. Revised May, 2002.)

REALTOR® A, a cooperating broker, filed a request for arbitration with REALTOR® B, the listing broker, in a dispute concerning entitlement to cooperative compensation in a real estate transaction. The complaint was referred to the Grievance Committee which concluded that a properly arbitrable matter existed and referred it to an arbitration hearing panel.

Shortly afterward REALTOR® B was notified that he was under investigation by the State Real Estate Commission for an alleged violation of the real estate regulations, based on a complaint filed by REALTOR® A.

REALTOR® B immediately filed an ethics complaint alleging violation of Article 17 by REALTOR® A for filing the complaint against REALTOR® B with the Commission. The complaint was referred to the Grievance Committee which concluded that since the ethics complaint and the arbitration request, while arising out of the same transaction, were clearly distinguishable the arbitration hearing should proceed as scheduled; and the ethics complaint should be dismissed, noting that while Article 17 requires REALTORS® to arbitrate contractual and specified non-contractual disputes, alleged violations of the Code and violations of law or regulations do not fall within its scope.

**Case #17-8: Attempted Use of Corporate Veil to Avoid Obligation to Arbitrate** (Revised Case #14-14 April, 1992. Transferred to Article 17 November, 1994.

Revised November, 1995. Revised November, 2001.)

REALTORS® A and B, principals in different firms, were both members of the same Board. A disagreement arose between them concerning entitlement to a commission in a real estate transaction. After initial efforts to resolve the dispute proved fruitless, REALTOR® A filed a request for arbitration with the Board which was reviewed by the Grievance Committee which concluded that an arbitrable issue existed. Instead of agreeing to arbitration through the Board, REALTOR® B filed a lawsuit against REALTOR® A. Receiving notice of the suit, REALTOR® A filed a charge with the Board alleging REALTOR® B had violated Article 17 of the Code of Ethics.

REALTOR® B, in his presentation to the Board of Directors indicated that, in his opinion, he was not subject to any ethics charge, since it was his corporation, and not REALTOR® B individually, that had filed suit against the corporation of REALTOR® A, not against REALTOR® A himself.

REALTOR® A told the Board of Directors that immediately upon occurrence of the dispute, he had suggested to REALTOR® B that the matter be arbitrated by the Board, and REALTOR® B said he would think about it. REALTOR® A then proceeded to file his

request for arbitration with the Board. However, REALTOR® B did not respond to the arbitration notice and, shortly thereafter, REALTOR® A received notice of the suit filed by REALTOR® B's corporation against the corporation of REALTOR® A. He said he then called REALTOR® B and again discussed the obligation of Article 17 with him. However, REALTOR® B advised him that his corporation was not subject to the requirements of the Code and stated his intent to pursue the litigation.

REALTOR® B acknowledged that the facts as related by REALTOR® A were correct and that his corporation had filed suit upon the advice of the corporation's legal counsel. REALTOR® B said that membership in a Board of REALTORS® is individual and that personal responsibility disappears when a matter of corporate business is involved. He pointed out that he was not the only principal or officer in his corporation and that the decision to file litigation was not made by him alone, but by all of the corporate officers.

The Board of Directors, in reaching its decision, did not agree with REALTOR® B's position. The Directors' noted that the membership requirement in a Board of REALTORS® has, as its purpose, the assurance of commitment by the principals in the firm to the Code of Ethics. This commitment addresses the conduct and activities of all persons affiliated with the REALTOR®'s firm whether a sole proprietorship, partnership, or corporation. Moreover, the Directors pointed out that Article 17 obligates REALTORS® to ". . . cause their firms to arbitrate and be bound by an award."

REALTOR® B was advised to withdraw the litigation and submit to arbitration by a date certain or his membership in the Board would be terminated. REALTOR® B accepted the decision, withdrew the suit against REALTOR® A, and submitted to arbitration.

**Case #17-9: REALTOR® Not to be Denied Arbitration** (Adopted Case #14-15 May, 1988. Transferred to Article 17 November, 1994. Deleted November, 2001.)

**Case #17-10: Board's Use of State Association Arbitration Panel** (Adopted Case #14-16 May, 1988. Transferred to Article 17 November, 1994.)

A dispute arose between REALTOR® A and REALTOR® B, two of the 15 members of the X Board of REALTORS®. Both members requested that the matter be arbitrated by the Board's Professional Standards Committee. The Grievance Committee concluded that an arbitrable matter existed but expressed reservations about the Board's ability to provide an objective and impartial hearing since most of the other Board Members were either employed by or affiliated with REALTOR® A or REALTOR® B, or were frequently involved in transactions with them.

At a specially called meeting of the Board of Directors, it was determined that the Board was incapable of providing an impartial panel for an arbitration hearing. The Board President was authorized to refer the request to the State Association for a hearing by a Hearing Panel of the State Association's Professional Standards Committee.

Pursuant to the Board's request, a Hearing Panel was convened by the State Association which rendered an award on behalf of REALTOR® A. REALTOR® B refused to abide by the decision on the grounds that the dispute had not been heard by a panel of his Board as required by Article 17.

Both the State Association and the local Board advised REALTOR® A to seek judicial enforcement of the award in a court of competent jurisdiction noting that REALTOR® B had participated in the arbitration; that the State Association is also charged with the responsibility for enforcing the Code of Ethics; that the Board was within its rights in referring the matter to the State Association, due to its inability to provide an impartial panel; and that representatives of the State Association and local Board would be available to appear in support of the request for judicial enforcement.

**Case #17-11: Appeal of Grievance Committee Decision** (Adopted Case #14-17 May, 1988. Transferred to Article 17 November, 1994.)

REALTORS® A and B were partners in a building company. They both held membership in the XYZ Board of REALTORS® and were Participants in the Board's Multiple Listing Service. After many successful years, they decided to terminate their partnership with REALTOR® A continuing the building business and REALTOR® B forming a new residential brokerage company. As part of their termination agreement, REALTOR® B agreed not to build new homes in the XYZ Board's jurisdiction for a period of twelve months.

Six months later, REALTOR® A filed a written request for arbitration with the Secretary of the XYZ Board of REALTORS®. In his request, REALTOR® A outlined the terms of their partnership termination agreement pointing out that REALTOR® B had continued to build new homes in violation of their agreement. REALTOR® A demanded that the Board take action to enforce the agreement and compel REALTOR® B to refrain from any further construction.

The Board Secretary forwarded the arbitration request to the Grievance Committee for review. After review, the Grievance Committee found the matter not properly arbitrable.

REALTOR® A was upset with the Grievance Committee's decision and appealed to the Board of Directors. The Board of Directors noted that Article 17 of the Code of Ethics requires arbitration of disputes “. . . between REALTORS® associated with different firms arising out of their relationship as REALTORS®.”

If REALTOR® A were requesting arbitration of a dispute arising out of a real estate transaction (such as a dispute concerning entitlement to commissions or subagency compensation), this would be a properly arbitrable matter. However, the Directors noted that the dispute in question related to the provisions of a partnership termination agreement which the Board had no authority to enforce. The Directors advised that while the Board's arbitration facilities were available to settle disputes between members, buyers, and sellers related to real estate transactions, the Board's authority did not extend to ordering performance of contracts since this was properly the privilege of the courts.

## **Case 17-12: Arbitration when a REALTOR® acts Exclusively as a Principal in a Transaction**

(Adopted November, 1995.)

REALTOR® A, a residential specialist in a major metropolitan area, inherited a cabin in the North woods from a distant relative. After spending a week of vacation there with her family, REALTOR® A decided that the fact that the cabin was over five hundred miles from her home made it likely that her use of the cabin would be infrequent, at best. Consequently, she decided to list and sell the cabin. REALTOR® A described her situation to REALTOR® B, who claimed to be experienced in the sale of vacation properties in the area and who told REALTOR® A that a quick sale should be “no problem.” Based on the REALTOR® B’s assurances, REALTOR® A signed a listing agreement with REALTOR® B.

REALTOR® B showed the property several times over the following months but to no avail. REALTOR® A and B spoke by long distance several times and ultimately concluded that a significant reduction in the listed price was called for.

A month later, REALTOR® B called REALTOR® A and advised that she had received an offer but disclosed that the offer was from REALTOR® B’s daughter and son-in-law. REALTOR® A thanked REALTOR® B for disclosing her relationship to the purchasers but went on to indicate that, as she felt that REALTOR® B had been overly optimistic in recommending an asking price in the first place, and that even after a significant price reduction the only offer produced by REALTOR® B had been from a member of her family, and that it was an “in-house” sale, REALTOR® A thought it was only fair that REALTOR® B would reduce her commission. REALTOR® B disagreed and sent the purchase offer to REALTOR® A. REALTOR® A accepted the offer but at the closing, which was handled in escrow, REALTOR® B was surprised to learn that REALTOR® A had instructed the closing officer to disburse to REALTOR® B only half of the commission called for in the listing contract. REALTOR® B filed an interboard arbitration request against REALTOR® A claiming the balance of her commission. REALTOR® A refused to arbitrate on the grounds that she had been the seller in the transaction and had not acted within the scope of her real estate license and that there had been no “relationship as REALTORS®” between her and REALTOR® B as referenced in Article 17 of the Code of Ethics. REALTOR® A’s refusal to arbitrate was referred to the Board of Directors of REALTOR® A’s primary Board and, in response to questions put to her, she repeated her claim that she had acted exclusively as a principal in the transaction and not as a real estate professional. The Directors concurred with her reasoning noting that the operative words in Article 17 refer to contractual disputes between REALTORS® in different firms “arising out of their relationship as REALTORS®.” They noted that if it had been the desire of REALTOR® A and B to bind themselves to resolve any contractual dispute that might arise out of their principal/agent relationship, that could have been accomplished through insertion of an appropriate arbitration clause in the listing agreement. Absent that, there was no obligation for REALTOR® A to arbitrate with REALTOR® B.

### Case 17-13: Arbitration Involving a REALTOR® Selling her Own Property (Adopted November, 1995.)

REALTOR® B was a real estate broker and property manager who, in addition to managing property for others, frequently bought and sold income property for her own account. Needing capital for another project, REALTOR® B decided to sell a three-flat building in which she had a strong equity position and which she thought would move quickly, given the current market conditions. To maximize market exposure, she listed the property with her firm and entered information regarding the listing into the MLS. She put a sign in front of the property indicating that it was for sale “by owner.” Her ads in the local newspapers indicated that the seller was a “broker-owner.”

REALTOR® A, who lived near the building, saw the “for sale” sign and called REALTOR® B. Introducing himself as a broker and as a REALTOR®, REALTOR® A asked what the asking price was and whether REALTOR® B was interested in listing her property. REALTOR® B did not indicate that she had listed her own property nor did she disclose that she was a broker or a REALTOR®. She did indicate that she would pay a commission to REALTOR® A if he procured a purchaser for the property but added that she preferred not to enter into an exclusive relationship with any broker and didn’t want to put anything into writing.

REALTOR® A thought the property might interest Dr. X, REALTOR® A’s chiropractor, and contacted him. Dr. X was in fact interested and, after several visits to the property, made an offer to purchase which was subsequently accepted by REALTOR® B.

At the closing, REALTOR® A learned several things, among them, that REALTOR® B, the seller, was also a REALTOR® and, more importantly, that REALTOR® B had instructed that only half of the previously agreed on commission was to be disbursed to REALTOR® A. When REALTOR® A protested the shortfall, REALTOR® B responded that her property was highly desirable, had “practically sold itself,” and, in any event, REALTOR® A had expended minimal efforts in bringing about the quick sale. REALTOR® A disagreed with REALTOR® B’s reasoning and, after appeals to REALTOR® B’s sense of fairness went unheeded, filed an arbitration request with the Board of REALTORS®. Faced with the request to arbitrate, REALTOR® B declined, referring to Article 17 of the Code of Ethics and noting that it relates to disputes between REALTORS® “...arising out of their relationship as REALTORS® ...” whereas she had been the seller.

REALTOR® B’s refusal to arbitrate was referred to the Board of Directors for their consideration. REALTOR® B repeated her defense that, as the seller, she was not obligated to arbitrate a dispute with another REALTOR® who had been acting within the scope of his broker’s license absent a specific arbitration agreement. REALTOR® B pointed out that the agreement between them was oral and, in response to REALTOR® B’s question, REALTOR® A admitted that the question of arbitration had never even been discussed. REALTOR® A produced a copy of a recent MLS compilation and pointed out that information regarding

the property appeared in it. REALTOR® B responded that inclusion of information in the MLS had been a “technicality” and that she had “listed with herself” merely to comply with MLS rules and that she had considered herself the seller, first and foremost. The Directors agreed with REALTOR® B that she obviously had been a principal in the sale of her own property but went on to conclude that by listing the property, albeit with herself, she no longer was exclusively a principal in the transaction but had also acted within the scope of her broker’s license. As such, she had become embroiled in a contractual dispute with another REALTOR® “...arising out of their relationship as REALTORS®...” and had become obligated to arbitrate.