CASE INTERPRETATIONS RELATED TO ARTICLE 2

Case #2-1: Disclosure of Pertinent Facts

(Revised Case #9-4 May, 1988. Transferred to Article 2 November, 1994.)

REALTOR® A, acting as a management agent, offered a vacant house for rent to a prospective tenant, stating to the prospect that the house was in good condition. Shortly after the tenant entered into a lease and moved into the house, he filed a complaint against REALTOR® A with his Board of REALTORS®, charging misrepresentation, since a clogged sewer line and a defective heater had been discovered, contrary to REALTOR® A's statement that the house was in good condition.

At the hearing, it was established that REALTOR® A had stated that the house was in good condition; that the tenant had reported the clogged sewer line and defective heater to REALTOR® A on the day after he moved into the house; that REALTOR® A responded immediately by engaging a plumber and a repairman for the heater; that REALTOR® A had no prior knowledge of these defects; that he had acted promptly and responsibly to correct the defects, and that he had made an honest and sincere effort to render satisfactory service. It was the Hearing Panel's decision that REALTOR® A was, therefore, not in violation of Article 2.

Case #2-2: Responsibility for Sales Associate's Error

(Revised Case #9-5 May, 1988. Transferred to Article 2 November, 1994.)

REALTOR® A, a REALTOR® principal, was asked to list a neglected house that obviously needed a wide range of repairs. He strongly advised the owner that it would be to his advantage to put the house in good repair before offering it for sale, but the owner wanted it sold at once on an "as is" basis. REALTOR® A wrote a novel advertisement offering a "clunker" in poor condition as a challenge to an ambitious do-it-yourself hobbyist.

A few days later, Sales Associate B, who was not a Board member, from REALTOR® A's office showed the house to a retired couple who liked the location and general features, and who had been attracted by the ad because the husband was looking forward to applying his "fix-up" hobby to improving a home. The sale was made. Shortly thereafter, REALTOR® A was charged by the buyer with having misrepresented the condition of the property.

REALTOR® A accompanied Sales Associate B to the hearing, armed with a copy of his candid advertisement. The hearing established that the buyer fully understood that the house was represented to be generally in poor condition, but that while inspecting the house with a view to needed repairs, Sales Associate B had commented that since the house was of concrete block and stucco construction, there would be no termite worries since termites could not enter that type of construction. Sales Associate B confirmed this and his belief that the statement was correct. However, after the sale was made, the buyer ripped out a sill to replace it and found it swarming with termites, with termite damage to floors in evidence. Further questioning established that there had been no evidence of termite infestation prior to the sale, and that the Sales Associate had volunteered an assurance that he thought was well grounded.

REALTOR® A, prior to the conclusion of the hearing, offered to pay the cost of exterminating the building and the cost of lumber to repair termite damage in view of Sales Associate B's failure to recommend a termite inspection, which was the usual and customary practice in this area. The complainant stated that this would satisfy him completely. It was the Hearing Panel's view that while REALTOR® A's actions were commendable, and would be taken into account by the Hearing Panel, REALTOR® A was still responsible for the errors and misstatements of the sales associates affiliated with him. The Hearing Panel concluded that REALTOR® A was in violation of Article 2.

Case #2-3: Obligation to Disclose Defects

(Revised Case #9-9 May, 1988. Transferred to Article 2 November, 1994.)

Seller A came to REALTOR® B's office explaining that his company was transferring him to another city and he wished to sell his home. In executing the listing contract, Seller A specified that the house had hardwood floors throughout and that the selling price would include the shutters and draperies that had been custom made for the house. Seller A said that he would like to continue to occupy the house for 90 days while his wife looked for another home at his new location, and agreed that REALTOR® B could show the house during this time without making a special appointment for each visit. Accordingly, REALTOR® B advertised the house, showed it to a number of prospective buyers, and obtained a purchase contract from Buyer C. Settlement was completed and at the expiration of the 90-day period from the date of listing, Seller A moved out and Buyer C moved in.

On the day that Buyer C moved in, seeing the house for the first time in its unfurnished condition, he quickly observed that hardwood flooring existed only on the outer rim of the floor in each room that had been visible beyond the edges of rugs when he inspected the house, and that the areas that had been previously covered by rugs in each room were of subflooring material. He complained that REALTOR® B, the listing broker, had misrepresented the house in his advertisements and in the description included in his listing form which had specified "hardwood floors throughout." Buyer C complained to REALTOR® B, who immediately contacted Seller A. REALTOR® B pointed out that the house had been fully furnished when it was listed and Seller A had said that the house had hardwood floors throughout. Seller A acknowledged that he had so described the floors, but said the error was inadvertent since he had lived in the house for ten years since it had been custom built for him. He explained that in discussing the plans and specifications with the contractor who had built the house, the contractor had pointed out various methods of reducing construction costs, including limiting the use of hardwood flooring to the outer rim of each room's floor. Since Seller A had planned to use rugs in each room, he had agreed, and after ten years of living in the house with the subflooring covered by rugs, he had "simply forgotten about it."

REALTOR® B explained, however, that Seller A's description, which he had accepted, had resulted in misrepresentation to the buyer. "But it's a small point," said Seller A. "He'll probably use rugs too, so it really doesn't make any difference." After further pressure from REALTOR® B for some kind of adjustment for Buyer C, Seller A concluded, "It was an honest mistake. It's not important. I'm not going to do anything about it. If Buyer C thinks this is a serious matter, let him sue me."

REALTOR® B explained Seller A's attitude to Buyer C, saying that he regretted it very much, but under the circumstances could do nothing more about it. It was at this point that Buyer C filed a complaint with REALTOR® B's Board.

At the hearing before a Hearing Panel of the Professional Standards Committee of REALTOR® B's Board, during which all of these facts were brought out, the panel found that REALTOR® B had acted in good faith in accepting Seller A's description of the property. While Article 2 prohibits concealment of pertinent facts, exaggeration, and misrepresentation, REALTOR® B had faithfully represented to Buyer C information given to him by Seller A. There were no obvious reasons to suspect that hardwood floors were not present throughout as Seller A had advised. REALTOR® B was found not in violation of Article 2.

Case #2-4: Obligation to Ascertain Pertinent Facts

(Revised Case #9-10 May, 1988. Transferred to Article 2 November, 1994.)

Shortly after REALTOR® A, the listing broker, closed the sale of a home to Buyer B, a complaint was received by the Board charging REALTOR® A with an alleged violation of Article 2 in that he had failed to disclose a substantial fact concerning the property. The charge indicated that the house was not connected to the city sanitary sewage system, but rather had a septic tank.

In a statement to the Board's Grievance Committee, Buyer B stated that the subject was not discussed during his various conversations with REALTOR® A about the house. However, he pointed out that his own independent inquiries had revealed that the street on which the house was located was "sewered" and he naturally assumed the house was connected. He had since determined that every other house on the street for several blocks in both directions was connected. He stated that REALTOR® A, in not having disclosed this exceptional situation, had failed to disclose a pertinent fact.

REALTOR® A's defense in a hearing before a Hearing Panel of the Professional Standards Committee was:

(1) that he did not know this particular house was not connected with the sewer;

(2) that in advertising the house, he had not represented it as being connected;

(3) that at no time, as Buyer B conceded, had he orally stated that the house was connected;

(4) that it was common knowledge that most, if not all, of the houses in the area were connected to the sewer; and

(5) that the seller, in response to REALTOR® A's questions at the time the listing was entered into, had stated that the house was connected to the sewer.

The panel determined that the absence of a sewer connection in an area where other houses were connected was a substantial and pertinent fact in the transaction; but that the fact that the house was not connected to the sewer was not possible to determine in the course of a visual inspection and, further, that REALTOR® A had made appropriate inquiries of the seller and was entitled to rely on the representations of the seller The panel concluded that REALTOR® A was not in violation of Article 2.

Case #2-5: Ascertainment and Disclosure of Pertinent Facts (Revised Case #9-11 May, 1988. Transferred to Article 2 November, 1994.)

Mrs. A, a retired college professor, came to the office of REALTOR® B, a cooperating broker, in search of a large house in which she could occupy a small apartment, using the remainder of the building to operate a residential club for graduate students. What she had in mind was a deluxe "rooming house" in which the tenants would have use of a parlor, dining room, kitchen, and laundry. She felt confident, from previous experience in the community, that she could obtain from 10 to 16 "roomers", and indicated that she would be guided in her charges to the tenants by the amount of mortgage payments she would have to make.

Most of the large houses on the market were inadequate. Finally, REALTOR® B located a massive old mansion listed with REALTOR® C that appealed to Buyer A. After repeated visits to the house and after discussing financing with a local lending institution, Buyer A said she was interested in the house if it could accommodate as many as 11 tenants. REALTOR® B accompanied her for another inspection to check on this point.

By planning double occupancy of the large bedrooms she found she could accommodate eight roomers. In addition, there were three small rooms upstairs that had been used for storage which REALTOR® B suggested might make acceptable single rooms. Buyer A agreed, and the sale was made.

Two months later, the buyer filed a complaint with the local Board, charging REALTOR® B with failing to disclose pertinent facts. The complaint alleged that REALTOR® B knew the buyer was taking on a substantial obligation with the expectation of housing 11 persons in the structure; that REALTOR® B had suggested that three rooms might make acceptable single rooms; and that she had been subsequently advised by the building department that these rooms could not be used as dwelling rooms since the windows were too small to meet code requirements. She had been advised that it would cost $1,480 to replace the windows. She charged REALTOR® B with negligence in not advising her of this deficiency. After reviewing the complaint, the Grievance Committee referred it for hearing before a Hearing Panel of the Professional Standards Committee.

At the hearing, REALTOR® B acknowledged the facts set out in Buyer A's complaint, but advised that the complaint did not state all of the relevant facts. With respect to the house in question, as with many other houses shown to Buyer A, he had made a special check at city hall as to zoning regulations to be sure that the kind of occupancy intended by the buyer would be lawful; that the buyer's specifications were unusual and that in attempting to meet them, he had devoted an unusual amount of time and effort to help her realize her objective; and that he had acted in good faith and had not deliberately failed to disclose any pertinent fact but had, in fact, urged the buyer to consult with an engineer and to check with the zoning authorities prior to making an offer to ensure that the property could be utilized as a residential club.

The Hearing Panel found that REALTOR® B had satisfied his duty to the buyer by recommending that the advice of experts be sought out and considered by the buyer prior to making an offer to purchase.

REALTOR® B was found not in violation of Article 2.

Case #2-6: Misrepresentation (Reaffirmed Case #9-12 May, 1988. Transferred to Article 2 November, 1994.)

REALTOR® A, a cooperating broker, had shown four houses to Buyer B, and Buyer B's wife had asked to see one of them a second time. There was a third inspection, and a fourth. They seemed at the point of decision but said they would like to "sleep on it." When there was no word the next day, REALTOR® A called. Buyer B said he was a bit hesitant on the price; that some transfers of executives in his company had been rumored; that this could affect him within the year; that he hesitated to buy at a price that might mean taking a loss if he should be transferred within a year.

REALTOR® A tried to reassure the prospect by telephone. Then he dictated a letter stating that the house was an exceptional bargain at the asking price and "our office guarantees to get your money out of it for you any time in the next year if you should need to sell." Buyer B came in and signed the contract.

Six months later, Buyer B came to REALTOR® A as a seller. He was being transferred. He would need to get his equity out of the house to be able to afford a purchase in the new community. REALTOR® A listed the house at the price Buyer B had paid for it. After a month there had been no offers. Buyer B reminded REALTOR® A of his written assurance that his office had guaranteed he would get his money out of the house within the year.

REALTOR® A explained that the market had become much less active and that Buyer B might have to reduce his price by $10,000 to $15,000 to attract a buyer. Whereupon, Buyer B filed a complaint with the Board of REALTORS® charging REALTOR® A with misrepresentation, exaggeration, and failure to make good a commitment. After examination of the complaint, the Grievance Committee referred it to the Professional Standards Committee for a hearing.

In response to questioning by the Hearing Panel, REALTOR® A admitted that he had written the letter to Buyer B in good faith and, at the time the letter was written, he had been certain that his office could obtain a price for the property that would ensure Buyer B was "getting his money out of the house." However, REALTOR® A explained that although he had held such an opinion in good faith, the market had softened and now the circumstances were different. The Hearing Panel reminded REALTOR® A that the pertinent fact being considered was not his opinion at the time of the previous sale as compared to his opinion now, but rather his written "guarantee" to Buyer B and his current failure to make good his written commitment. It was the conclusion of the Hearing Panel that REALTOR® A had engaged in misrepresentation and was in violation of Article 2.

Case #2-7: Obligation to Determine Pertinent Facts (Revised Case #9-13 May, 1988. Transferred to Article 2 November, 1994.)

REALTOR® A, a home builder, showed one of his newly constructed houses to Buyer B. In discussion, the buyer observed that some kind of construction was beginning nearby. He asked REALTOR® A what it was. "I really don't know," said REALTOR® A, "but I believe it's the attractive new shopping center that has been planned for this area." Following the purchase, Buyer B learned that the new construction was to be a bottling plant and that the adjacent area was zoned industrial.

Charging that the proximity of the bottling plant would have caused him to reject purchase of the home, Buyer B filed a complaint with the Board of REALTORS® charging REALTOR® A with unethical conduct for failing to disclose a pertinent fact. The Grievance Committee referred the complaint for a hearing before a Hearing Panel of the Professional Standards Committee.

During the hearing, REALTOR® A's defense was that he had given an honest answer to Buyer B's question. At the time he had no positive knowledge about the new construction. He knew that other developers were planning an extensive shopping center in the general area, and had simply ventured a guess. He pointed out, as indicated in Buyer B's testimony, that he had prefaced his response by saying he didn't know the answer to this question.

The Hearing Panel concluded that Buyer B's question had related to a pertinent fact; that REALTOR® A's competence required that REALTOR® A know the answer or, if he didn't know the answer, he should not have ventured a guess, but should have made a commitment to get the answer. The Hearing Panel also noted that although REALTOR® A had prefaced his response with "I don't know," he had nonetheless proceeded to respond and Buyer B was justified in relying on his response. REALTOR® A was found to have violated Article 2.

Case #2-8: Misrepresentation (Reaffirmed Case #9-14 May, 1988. Transferred to Article 2 November, 1994.)

REALTOR® A listed a motel for sale and prepared a sales prospectus setting out figures reporting the operating experience of the owner in the preceding year. The prospectus contained small type at the bottom of the page stating that the facts contained therein, while not guaranteed as to accuracy, were "accurate to the best of our knowledge and belief," and carried the name of REALTOR® A as the broker.

Buyer B received the prospectus, inspected the property, discussed the operating figures in the prospectus and other features with REALTOR® A, and signed a contract.

Six months after taking possession, Buyer B ran across some old records that showed discrepancies when compared with the figures in REALTOR® A's prospectus. Buyer B had not had as profitable an operating experience as had been indicated for the previous owner in the prospectus, and the difference could be substantially accounted for by these figures. He filed a charge of misrepresentation against REALTOR® A with REALTOR® A's Board.

At the hearing, REALTOR® A took responsibility for the prospectus, acknowledging that he had worked with the former owner in its preparation. The former owner had built the motel and operated it for five years. REALTOR® A explained that he had advised him that $10,000 in annual advertising expenses during these years could reasonably be considered promotional expenses in establishing the business, and need not be shown as annually recurring items. Maid service, he also advised, need not be an expense item for a subsequent owner if the owner and his family did the work themselves. REALTOR® A cited his disclaimer of a guarantee of accuracy. Buyer B testified that he had found maid service a necessity to maintain the motel, and it was apparent that the advertising was essential to successful operation. He protested that the margin of net income alleged in the prospectus could not be attained as he had been led to believe by REALTOR® A.

The Hearing Panel concluded that REALTOR® A had engaged in misrepresentation in omitting from the prospectus information which he reasonably should have known to be relevant and significant and that the disclaimer did not, in any respect, avoid his obligation of full disclosure.

REALTOR® A was found in violation of Article 2.

Case #2-9: REALTOR®'s Responsibility for REALTOR-ASSOCIATE®'s Statement (Reaffirmed Case #9-15 May, 1988. Transferred to Article 2 November, 1994.)

REALTOR-ASSOCIATE® D, associated with the firm of REALTOR® A, obtained an offer to buy a property at less than the listed price. The offer was rejected. The property had been exclusively listed by REALTOR® B and had been published through the Multiple Listing Service of the local Board of REALTORS®. The owner received no further offers and at the expiration of the exclusive listing with REALTOR® B, he approached REALTOR® C and exclusively listed the property with him.

About this time, REALTOR-ASSOCIATE® D terminated his association with REALTOR® A and became affiliated with REALTOR® C's organization.

The prospect who had made the unsuccessful offer on the property continued to seek the assistance of REALTOR-ASSOCIATE® D and made another offer on the property, this time at the full listed price. REALTOR-ASSOCIATE® D and REALTOR® C, the listing broker, submitted this offer to the owner, and it was accepted.

A few months following the sale, the purchaser complained to the Board of REALTORS® that REALTOR-ASSOCIATE® D had made a statement that "a visible gas pipeline easement extended to the property but did not go onto any part of the property." The complainant presented evidence that the easement, in fact, crossed the property, and the complainant charged REALTOR® C and REALTOR-ASSOCIATE® D with misrepresentation.

The complaint was reviewed by the Grievance Committee and then referred to the Board's Professional Standards Committee which promptly scheduled a hearing and asked REALTOR® C and REALTOR-ASSOCIATE® D to be present to answer charges of unethical conduct in violation of Article 2 of the Code of Ethics.

At the hearing, REALTOR-ASSOCIATE® D confirmed that he had made the statement attributed to him; that he thought it was correct because the information had been given to him by a neighboring property owner. Questioning revealed that REALTOR-ASSOCIATE® D had made no effort to verify the information from authoritative sources. REALTOR® C protested he knew nothing about the matter; that he had not been present when REALTOR-ASSOCIATE® D made the statement; that he was not responsible for the oral statements made by a REALTOR-ASSOCIATE®; and that REALTOR-ASSOCIATE® D's first contact with the buyer had occurred while REALTOR-ASSOCIATE® D was associated with REALTOR® A.

It was concluded by the Hearing Panel that REALTOR® C and REALTOR-ASSOCIATE® D were in violation of Article 2 of the Code of Ethics in a way that materially imposed upon the buyer, who actually received measurably less in his package of ownership rights when he purchased the property than he was led to believe he was buying. Since it had been demonstrated that REALTOR-ASSOCIATE® D made the statement containing misinformation on a pertinent fact while he was affiliated with REALTOR® C, and in view of the fact that REALTOR® C was the exclusive agent of the seller at the time, REALTOR® C was held to be responsible.

He was advised that a REALTOR® is definitely responsible for pertinent statements of his salespersons in real estate transactions.

REALTOR® C and REALTOR-ASSOCIATE® D were found in violation of Article 2.

Case #2-10: Use of State Revenue Stamps to Mislead (Reaffirmed Case #9-16 May, 1988. Transferred to Article 2 November, 1994. Revised November, 2001.)

REALTOR® A, the listing broker, had shown a house to Buyer B on several occasions. It was an old house in a desirable location in which Buyer B had become interested for extensive modernization. It was listed at $140,000. Buyer B had offered $125,000, but the owner had held firm to his asking price. While negotiations were at this point, REALTOR® A received a call from the owner saying that because of a sudden death in the family a number of family plans were being rapidly changed, and if a signed offer was presented within 24 hours, the price of $125,000 would be accepted. REALTOR® A called on Buyer B, obtained a written offer, and closed the transaction.

Buyer B then continued his discussion with REALTOR® A concerning financing for the modernization of the house that he contemplated. In this connection, REALTOR® A advised him that state revenue stamps in the amount of $5.00 per thousand of the price paid for the house would have to be affixed to the deed when it was filed, and suggested that Buyer B spend an extra $75 for stamps to give the appearance of a $140,000 purchase price for the house. This, he pointed out, would be to his advantage in obtaining a liberal mortgage, should it be checked by the financing institution when Buyer B applied for a mortgage loan to finance his modernization program.

An official of a local mortgage company learned from Buyer B of this advice given by REALTOR® A, and made a formal complaint to the Board of REALTORS® that REALTOR® A had violated Article 2 of the Code by making this suggestion. He pointed out that mortgage finance institutions in the locality generally regarded the state revenue stamps as an indication of selling price.

At the hearing, REALTOR® A's defense was that he had not been a party to the naming of any false consideration in a document; that the deed in this case stated that the consideration was "ten dollars and other consideration"—a nominal consideration expressly permitted by the Code of Ethics; that the state revenue stamps are not required as a means of indicating prices paid for property, but as a means of deriving state revenue; that while a buyer may not lawfully place less in such revenue stamps on a deed than $5.00 per thousand in price paid, there was nothing illegal or unethical in placing a greater amount in stamps on the deed than the minimum required.

It was the finding of the Hearing Panel that the circumstances under which REALTOR® A gave his advice to Buyer B respecting state revenue stamps made his action tantamount to urging a false consideration of a document, since it obviously showed intent to mislead and deceive a financing institution which, in keeping with general practice, might check the deed and the stamps affixed to it as a factor in appraising the property for mortgage loan purposes. The panel's decision pointed out that Buyer B's comments had shown he so interpreted the intent of REALTOR® A's advice. It stated that while use of an excessive amount of state revenue stamps is, in itself, not necessarily unethical, the circumstances and intent can make such action unethical.

REALTOR® A was found in violation of Article 2 of the Code of Ethics.

Case #2-11: False Consideration in a Deed

(Revised Case #9-17 May, 1988. Transferred to Article 2 November, 1994.)

Commissioner B, a member of a state conservation commission, filed a complaint with a Board of REALTORS® charging that REALTOR® A had been a party to the naming of a false consideration in a deed.

In his response, REALTOR® A denied the charge and protested that all of his actions had been clearly necessary in his client's interest and justifiable in view of the unusual circumstances.

At the hearing, Commissioner B, the complainant, produced a photocopy of a deed to 300 acres of undeveloped land with the consideration stated to be $1,000 an acre; an affidavit from Seller C, who had deeded the land to the XYZ Development Company, affirming that the price actually paid for the land by the company was $600 an acre; and a letter from the president of the XYZ Development Company stating that the deed was prepared in consultation with, and upon advice of, REALTOR® A, upon whom the company depended in its land acquisition and home selling activities.

REALTOR® A explained that he had assisted XYZ Development Company over a period of several years in working out a long-range building program, and that in keeping with this plan the company would need 300 acres of undeveloped land in that area before the end of the year. At the time he began negotiations, a news story emanating from the state conservation commission announced that it would acquire extensive tracts of undeveloped land. The story had indicated that this acquisition would take place in five counties, including the county where the property under discussion was located. The story had also indicated that the commission would be limited in its acquisitions to land that would be purchased for not more than $800 an acre.

REALTOR® A had advised his clients that suitable land for their proposed development could probably be purchased for $500 an acre. He recommended, however, that he be authorized to offer $600 per acre. This authority was given and REALTOR® A negotiated purchase from Seller C of the 300 acre tract on behalf of the Development Company for $600 an acre.

REALTOR® A expressed concern that the state conservation commission might undertake to acquire the property from the company, since the price at which it was bought was below the commission per acre limit. An officer suggested asking Seller C to deed the property for "ONE DOLLAR AND OTHER CONSIDERATIONS" and then placing revenue stamps indicative of a $1,000 per acre price on the deed.

REALTOR® A pointed out that it was unlikely that a $1,000 per acre value could be supported by revenue stamps alone. He suggested that Seller C be asked to agree to a deed that would state the consideration to have been at a rate of $1,000 per acre.

Commissioner B testified that he had reviewed recorded deeds in recent sales, had visited the property in question, and had called on the sellers because of the high price at which it apparently had been sold. He had commented on the very favorable price to Seller C, who had inadvertently let it slip that the price shown on the deed was not the price paid. He later confirmed this in an affidavit that was presented at the hearing. The Hearing Panel found REALTOR® A in violation of Article 2 of the Code of Ethics by becoming a party to the naming of a false consideration.

Case #2-12: Implied Membership in Institute, Society, or Council of National Association

(Revised Case #9-19 May, 1988. Transferred to Article 2 November, 1994. Deleted November, 2001.)

Case #2-13: REALTOR® Buying and Selling to One Another are Still Considered REALTORS®

(Revised Case #9-23 May, 1988. Transferred to Article 2 November, 1994. Cross-reference Case #1-20.)

REALTOR® A owned a home which he listed through his own brokerage firm. The property listing was filed with the Multiple Listing Service of the Board. REALTOR® B called REALTOR® A and told him of his interest in purchasing the home for himself. REALTOR® A suggested a meeting to discuss the matter. The two agreed upon terms and conditions and the property was sold by REALTOR® A to REALTOR® B.

A few months later during hard rains, leakage of the roof occurred with resultant water damage to the interior ceilings and side walls. REALTOR® B had a roofing contractor inspect the roof. The roofing contractor advised REALTOR® B that the roof was defective and advised that only a new roof would prevent future water damage.

REALTOR® B then contacted REALTOR® A and requested that he pay for the new roof. REALTOR® A refused, stating that REALTOR® B had a full opportunity to look at it and inspect it. REALTOR® B then charged REALTOR® A with violation of Articles 1 and 2 of the Code of Ethics by not having disclosed that the roof had defects known to REALTOR® A prior to the time the purchase agreement was executed.

At the subsequent hearing, REALTOR® B outlined his complaint and told the Hearing Panel that at no time during the inspection of the property, or during the negotiations which followed, did REALTOR® A disclose any defect in the roof. REALTOR® B acknowledged that he had walked around the property and had looked at the roof. He had commented to REALTOR® A that the roof looked reasonably good, and REALTOR® A had made no comment. The roofing contractor, REALTOR® B had employed after the leak occurred, told him that there was a basic defect in the way the shingles were laid in the cap of the roof and in the manner in which the metal flashing on the roof had been installed. It was the roofing contractor's opinion that the home's former occupant could not have been unaware of the defective roof or the leakage that would occur during hard rains.

REALTOR® A told the panel that he was participating only to prove that he was not subject to the Code of Ethics while acting as a principal as compared with his acts as an agent on behalf of others. He pointed out that he owned the property and was a principal, and that REALTOR® B had purchased the property for himself as a principal. The panel concluded that the facts showed clearly that REALTOR® A, the seller, did have knowledge that the roof was defective, and had not disclosed it to REALTOR® B, the buyer. Even though a REALTOR® is the owner of a property, when he undertakes to sell that property he accepts the same obligation to properly represent its condition to members of the public, including REALTORS® who are purchasers in their own name, as he would have if he were acting as the agent of a seller.

The panel concluded that REALTOR® A was in violation of Articles 1 and 2 of the Code.

Case #2-14: Time at Which Modification to Offer of Subagency is Communicated is a Determining Factor

(Revised Case #9-26 May, 1988. Transferred to Article 2 November, 1994. Cross-reference Case #3-7.)

REALTOR® A listed Seller X's home and filed the listing with the MLS. The property data sheet indicated the compensation REALTOR® A was offering to the other Participants if they were successful in finding a buyer for Seller X's home.

During the next few weeks, REALTOR® A authorized several Participants of the Multiple Listing Service, including REALTOR® C, to show Seller X's home to potential buyers. Although several showings were made, no offers to purchase were forthcoming. REALTOR® A and Seller X, in discussing possible means of making the property more salable, agreed to reduce the listed price. REALTOR® A also agreed to lower his commission. REALTOR® A changed his compensation offer in the MLS and then called the MLS Participants who had shown Seller X's property to advise them that he was modifying his offer of compensation to cooperating brokers. Upon receiving the call, REALTOR® C responded that he was working with Prospect Z who appeared to be very interested in purchasing the property and who would probably make an offer to purchase in the next day or two. REALTOR® C indicated that he would expect to receive the compensation that had been published originally in the MLS and not the reduced amount now being offered to him, since he had already shown the property to Prospect Z and expected an offer to purchase would be made shortly. REALTOR® A responded that since Prospect Z had not signed an offer to purchase and no offer had been submitted the modified offer of compensation would be applicable.

The following day, REALTOR® C wrote an offer to purchase for Prospect Z. The offer was submitted to the Seller by REALTOR® A and was accepted. At the closing, REALTOR® A gave REALTOR® C a check for services in an amount reflecting the modified offer communicated to REALTOR® C by phone. REALTOR® C refused to accept the check indicating that he felt REALTOR® A's actions were in violation of the Code of Ethics. REALTOR® C filed a complaint with the Board's Grievance Committee alleging violation of Articles 2 and 3 on the part of REALTOR® A citing Standard of Practice 3-2 in support of the charge.

During the hearing, REALTOR® C stated that REALTOR® A's modification of the compensation constituted a misrepresentation through concealment of pertinent facts since he had not provided REALTOR® C with specific written notification of the modification prior to the time REALTOR® C began his efforts to interest the purchaser in the listed property. REALTOR® A defended his actions by indicating that timely notice of the modification of compensation offered had been provided to REALTOR® C by telephone prior to REALTOR® C submitting a signed offer to purchase. REALTOR® A also indicated that his modified offer of compensation had been bulletined to all Participants, including REALTOR® C, through the MLS in accordance with Standard of Practice 3-2 prior to the time that REALTOR® C had submitted the signed offer to purchase. REALTOR® A also commented that had REALTOR® C submitted the signed offer to purchase prior to REALTOR® A communicating the modified offer, then REALTOR® A would have willingly paid the amount originally offered.

Based on the evidence presented to it, the Hearing Panel concluded that REALTOR® A had acted in accordance with the obligation expressed in Standard of Practice 3-2 based on changing the offer of cooperative compensation in the MLS alone, even without the courtesy phone calls, and consequently was not in violation of Articles 2 or 3.

Case #2-15: Refusal to Divulge Source of Fraudulent Information (Originally Case #3-1. Revised and transferred to Article 9 as Case #9-27 May, 1988. Transferred to Article 2 November, 1994.)

An official of the Federal Housing Administration (FHA) called on REALTOR® A to enlist his cooperation in solving a problem. As the official explained, FHA had reason to believe that there had been a number of "dual contract" transactions in the area involving FHA mortgage insurance. In a typical instance, a prospective buyer was induced by a broker to sign an offer to purchase a house at a figure several thousand dollars higher than the listed price of the house, so that the signed offer might be used as an evidence of value in obtaining a mortgage loan higher than would be available if the true selling price of the property was stated in the offer. In this procedure, the broker, after having thus fraudulently arranged for a mortgage loan, executed another contract, stating the true price offered, for presentation to the seller of the property.

The FHA official further explained that such conduct involved misrepresentation and law violations, and distorted FHA's market data. FHA lacked documentation, but believed that this type of procedure had been used by some brokers, builders, and to some extent had been condoned by persons approving mortgage loan applications.

He asked for REALTOR® A's assistance in documenting specific instances. REALTOR® A replied that persons in the real estate business had "common knowledge" that such practices were in use; that through business activities he knew of specific persons who had practiced it and had in his files legal evidence of fraudulent offers that were used to obtain mortgage loans in two instances. However, he took the position that much as he deplored such unethical conduct, he had no inclination to play the role of informer and did not believe he should be asked to. He refused to divulge information that he acknowledged he had in his possession.

It came to the attention of the Grievance Committee of REALTOR® A's Board that he had refused to cooperate with the FHA in bringing instances of alleged fraud and unethical conduct to light. The function of the Grievance Committee includes review of undocumented or hearsay reports of unethical conduct, and if definite evidence were found, making the evidence the subject of a complaint before the Board's Professional Standards Committee.

Fulfilling its duty, the Grievance Committee called in REALTOR® A and requested that he divulge the information in his possession to the Committee. REALTOR® A refused, and upon his refusal and statement of his position, the Grievance Committee referred the matter to the Professional Standards Committee of the Board for hearing charging REALTOR® A with having violated Article 2.

After hearing REALTOR® A restate his position, the Hearing Panel pointed out that Article 2 obligates a REALTOR® to "avoid misrepresentation or concealment of pertinent facts relating to a property or a transaction;" that his reluctance to avoid the role of informer was understandable, but that he could have discharged his obligation by divulging the factual information in his possession to the Board's Grievance Committee.

Because REALTOR® A had refused and continued in his refusal to divulge information to the Grievance Committee, a Hearing Panel of the Professional Standards Committee found him in violation of Article 2.

Case #2-16: Falsification of Credit Information (Adopted as Case #9-29 May, 1988. Transferred to Article 2 November, 1994.)

REALTOR® A, a property manager had an agreement to manage Owner O's 24 unit apartment building. During the course of their negotiations, Owner O had repeatedly emphasized that Realtor A was expected to use great care in screening the financial backgrounds of potential tenants.

Several months later, REALTOR® A received an application for a lease from prospective Tenant T. Following his usual procedure, REALTOR® A obtained a credit report that indicated that Tenant T had a generally satisfactory credit history but a concluding paragraph noted that Tenant T was several months in arrears on accounts with local department stores. REALTOR® A, anxious to rent the vacant apartment but recognizing that his management agreement with Owner O precluded rentals to individuals with questionable credit histories, used correction fluid to eradicate the reference to the delinquent accounts. Tenant T made a security deposit equal to one month's rent, signed a one year lease, and moved into the apartment.

Early the following month, REALTOR® A noted that Tenant T had not mailed his rent check. A call to Tenant T's apartment revealed that his phone had been disconnected. REALTOR® A drove to the property, rang Tenant T's bell and, getting no response, let himself into Tenant T's apartment with a master key. It became quickly apparent that extensive damage had been done to the apartment since Tenant T had taken possession. Additional phone calls made it clear that Tenant T had moved out of state leaving no forwarding address and that Tenant T's security deposit would only cover a small part of the damage. Owner O, realizing that he would have to pay for most of the repairs, instructed his attorney to try to locate Tenant T. The attorney, in turn, asked REALTOR® A to provide all materials concerning Tenant T. REALTOR® A instructed his office manager to deliver the file on Tenant T to the attorney's office.

The attorney, in reviewing the documents, noted that an item had been eradicated from the credit report. Obtaining a duplicate copy from the local credit bureau, it became clear that the report in REALTOR® A's file had been altered. The attorney shared this information with his client, Owner O, who filed a complaint against REALTOR® A alleging that Article 2 had been violated.

At the hearing, REALTOR® A admitted that he had altered the credit report but defended his action on the basis that Tenant T's credit history had been generally satisfactory except for the delinquent department store accounts. Further, REALTOR® A indicated that in his opinion Owner O's insistence that any potential tenant have an unblemished credit history was unwarranted, made REALTOR® A's role in identifying potential tenants needlessly difficult, and could ultimately result in a large number of vacancies, a result not in Owner O's best interest.

The Hearing Panel concluded that REALTOR® A's defense was unfounded and that in altering the credit report he had knowingly misrepresented a pertinent fact in an attempt to circumvent specific instructions from his principal. REALTOR® A was found to have violated Article 2.

Case #2-17: Obligations of REALTORS® in Referral (Adopted as Case #9-30 May, 1988. Transferred to Article 2 November, 1994. Deleted November, 2001.)

Case #2-18: Honest Treatment of All Parties

(Revised Case #9-31 May, 1988. Transferred to Article 2 November, 1994. Cross-reference Case #1-2.)

As the exclusive agent of Client A, REALTOR® B offered Client A's house for sale, advertising it as being located near a bus stop. Prospect C, who explained that his daily schedule made it necessary for him to have a house near the bus stop, was shown Client A's property, liked it, and made a deposit. Two days later REALTOR® B read a notice that the bus line running near Client A's house was being discontinued. He informed Prospect C of this and Prospect C responded that he was no longer interested in Client C's house since the availability of bus transportation was essential to him. REALTOR® B informed Client A and recommended that Prospect C's deposit be returned.

Client A reluctantly complied with REALTOR® B's recommendation, but then complained to the Board of REALTORS® that REALTOR® B had not faithfully protected and promoted his interests; that after Prospect C had expressed his willingness to buy, REALTOR® B should not have made a disclosure that killed the sale since the point actually was not of major importance. The new bus route, he showed, would put a stop within six blocks of the property.

In a hearing before a Hearing Panel of the Board's Professional Standards Committee, REALTOR® B explained that in advertising Client A's property, the fact that a bus stop was less than a block from the property had been prominently featured. He also made the point that Prospect C, in consulting with him, had emphasized that Prospect C's physical disability necessitated a home near a bus stop. Thus, in his judgment the change in bus routing materially changed the characteristics of the property in the eyes of the prospective buyer, and he felt under his obligation to give honest treatment to all parties in the transaction, that he should inform Prospect C, and that in so doing he was not violating his obligation to his client.

The Hearing Panel concluded that REALTOR® B had not violated Article 1, but had acted properly under both the spirit and the letter of the Code of Ethics. The panel noted that the decision to refund Prospect C's deposit was made by the seller, Client A, even though the listing broker, REALTOR® B, had suggested that it was only fair due to the change in circumstances.

Case #2-19: Deceptive Information in MLS Compilations (Adopted May, 2004.)

REALTOR® R searched the MLS compilation of current listings on behalf of his client, Dr. Z, who had recently completed his residency and was returning home to take a position on the staff of the community hospital. REALTOR® R's search returned several listings that satisfied Dr. Z's requirements, including a two-story residence listed with REALTOR® B that showed, in the "Remarks" section of the property data form "Pay your mortgage with rent from the apartment upstairs."

REALTOR® R attached the listings he'd identified to an e-mail message that he sent to Dr. Z. A day later, REALTOR® R received a call from Dr. Z who told him there was something about REALTOR® B's listing that struck him as odd. "That house is in the neighborhood I grew up in," said Dr. Z, "I also remember our neighbors having a problem with the Building Department when they added a kitchen on the second floor so their grandmother could have her own apartment."

REALTOR® R assured Dr. Z that he would make the necessary inquiries and get back to him promptly. His call to the Building Department confirmed Dr. Z's suspicion that the home was zoned single family.

Feeling embarrassed and misled by REALTOR® B's apparent misrepresentation, REALTOR® R filed a complaint with the local association of REALTORS® alleging misrepresentation on the part of REALTOR® B for publishing inaccurate information in the MLS.

At the hearing convened to consider REALTOR® R's complaint, REALTOR® B acknowledged the seller had told him that the conversion had been made to code but without the necessary permits, and the apartment had never been rented. "I assumed the new owners could get a variance from the Building Department," he said.

The Hearing Panel did not agree with REALTOR® B's defense or rationale and concluded that showing a single family home as having income-producing potential from an upstairs apartment which had never been rented was a misrepresentation that violated Article 2.