

CASE INTERPRETATIONS RELATED TO ARTICLE 5:

Case #5-1: Contemplated Interest in Property Appraised (Reaffirmed Case #12-2 May, 1988. Transferred to Article 5 November, 1994.)

Seller A and Buyer B were negotiating the sale of an apartment building, but couldn't agree on the price. Finally, they agreed that each would engage an appraiser and they would accept the average of the two appraisals as a fair price. Seller A engaged REALTOR® C as his appraiser, and Buyer B engaged REALTOR® D. Both REALTORS® were informed of the agreement of the principals. The two appraisal reports were submitted. The principals averaged the two valuations and made the transaction at the price determined.

Six months later, it came to the attention of Seller A that REALTOR® C was managing the building that he had appraised. Upon making further inquiries he learned that REALTOR® C for several years had managed five other buildings owned by Buyer B, and that he had been Buyer B's property manager at the time he accepted the appraisal assignment from Seller A.

At this point Seller A engaged REALTOR® E to make an appraisal of the building he had sold to Buyer B. REALTOR® E's valuation was approximately 30% higher than that arrived at six months earlier by REALTOR® C.

These facts were set out in a complaint against REALTOR® C made by Seller A to the local Board of REALTORS®. The complaint charged that since REALTOR® C was an agent of Buyer B; since he managed all of Buyer B's properties; since he had become manager of the property he had appraised for Seller A in connection with a sale to Buyer B; and since he had not disclosed his relationship to Buyer B, he had acted unethically, and in the interest of his major client had placed an excessively low valuation on the property he had appraised for Seller A.

At the hearing, Seller A also brought in a witness who stated that he had heard Buyer B say that he had made a good buy in purchasing Seller A's building because Seller A's appraiser was his (Buyer B's) property manager.

Buyer B, appearing as a witness for REALTOR® C, disputed this and protested that he had paid a fair price. He substantiated REALTOR® C's statement that management of the building formerly owned by Seller A was never discussed between them until after it had been purchased by Buyer B.

It was concluded by the Hearing Panel that whether or not management of the building was discussed between Buyer B and REALTOR® C prior to its purchase by Buyer B, REALTOR® C had a logically contemplated interest in it as a property manager in view of the fact that he had served as property manager for all other properties owned by Buyer B. In view of this contemplated interest, he was bound by the terms of Article 5

to disclose this interest to his appraisal client, Seller A. He had failed to do this, and so was found in violation of Article 5 of the Code of Ethics.