

## CASE INTERPRETATIONS RELATED TO ARTICLE 8:

### **Case #8-1: Failure to Put Deposit in Separate Account** (Revised Case #18-1 May, 1988. Transferred to Article 8 November, 1994. Revised November, 2001.)

REALTOR® A, a listing broker, obtained a signed offer to purchase, together with Buyer C's check for \$5,000 as an earnest money deposit. Buyer C's offer was subject to the sale of his current residence. REALTOR® A presented the offer to Seller B who accepted it. REALTOR® A then inadvertently deposited the earnest money check in his personal checking account. Since Buyer C's offer was contingent on the sale of his current home, Seller B's house remained on the market. A week later, REALTOR® A received another offer to purchase Seller B's house from another broker and presented it to the seller as a back-up offer. Buyer C was informed about this new offer and reluctantly concluded that he would be unable to waive the sale contingency or proceed with the purchase of Seller B's house. He then asked REALTOR® A for his \$5,000 check back. REALTOR® A explained that he had mistakenly deposited Buyer C's check in his personal bank account which had been attached since he received Buyer C's offer, and he was temporarily unable to refund the deposit to Buyer C.

Buyer C filed a complaint with the Board of REALTORS®, which was received by the Grievance Committee. The Grievance Committee concluded that the complaint warranted a hearing and referred it to the Professional Standards Committee. At hearing, REALTOR® A explained that his bank account had been unexpectedly attached following the loss of a civil suit which he was appealing; that his deposit of Buyer C's check in his personal account was a simple error in handling deposit slips; that he was arranging for the prompt release of his account; and that everything would be straightened out in three or four days, which should not be of great inconvenience to Buyer C.

It was the conclusion of the Hearing Panel that REALTOR® A was in violation of Article 8 of the Code of Ethics for having failed to put Buyer C's earnest money deposit in a special account separate from his personal funds.

### **Case #8-2: Request for Investigation Filed by Board with the State Real Estate Commission** (Originally Case #15-7. Revised and transferred to Article 18 as Case #18-4 May, 1988. Transferred to Article 8 November, 1994. Revised November, 2001.)

REALTOR® A listed Client B's residential property and sold it to Buyer C, who made a substantial deposit subject only to Buyer C's obtaining a mortgage on terms and conditions not exceeding a specified rate of interest within 60 days.

REALTOR® A assisted Buyer C by introducing him to officials of a lending institution, and after processing of his application for

a mortgage, a written mortgage commitment was made by the lending institution which met the terms and conditions of the sales agreement. However, shortly after the mortgage commitment was received by Buyer C, REALTOR® A received a certified, return receipt requested letter from Buyer C, advising that Buyer C had changed his mind and would not go through with the sale. REALTOR® A discussed the matter by phone, but Buyer C said he would rather forfeit his deposit and definitely would not complete the sale, even at the risk of the seller suing for specific performance.

REALTOR® A then advised Client B of Buyer C's refusal to go through with the sale and Client B told REALTOR® A that he did not wish to sue Buyer C, but would just accept a portion of the forfeited deposit as specified in the listing agreement between Client B and REALTOR® A.

REALTOR® A then obtained a written release from the sale from Client B and Buyer C, and promised to send Client B a check for the portion of the forfeited deposit due to Client B as specified in the listing agreement. However, REALTOR® A failed to send Client B a check and Client B filed a complaint with the Executive Officer of the Board alleging a violation of Article 8 of the Code of Ethics.

At the hearing, Client B stated that he had no complaint about REALTOR® A's services to him except REALTOR® A's failure to provide Client B with the portion of the forfeited deposit due him, and that after several telephone calls and letters, REALTOR® A had told Client B that he would provide the forfeited monies due Client B "just as soon as he could." Client B said REALTOR® A told him he had some unexpected expenses and therefore Client B would have to wait until REALTOR® A obtained other funds which he expected to receive shortly.

REALTOR® A admitted the facts as related and further admitted that he had not placed the deposit received from Buyer C into an escrow account, but had placed it in his general funds. He said that unexpected expenditures had caused a deficit balance in these funds, and he would pay Client B as soon as he could.

The Hearing Panel concluded that REALTOR® A was in violation of Article 8 of the Code of Ethics and recommended that the decision, when final, be forwarded to the State Real Estate Commission as a possible violation of the public trust.

The Board of Directors affirmed the decision of the Hearing Panel; ordered implementation of the recommended sanction; and requested that the President forward, with advice of Board legal counsel, the final decision to the State Real Estate Commission as a possible violation of the public trust.