



Bob Aaron bob@aaron.ca

Bob Aaron

Recent decision does little to dissuade dishonest realtors

Real Estate Council should have yanked agent's licence

The Real Estate Council of Ontario (RECO), the governing body of the province's real estate agents, has served notice on the profession that it will not tolerate real estate agents who artificially inflate home prices to increase the amount of mortgage a purchaser can secure on a property. Unfortunately, the penalty it imposed in a recent case does little to protect the public from such schemes, known as Oklahoma's.

The issue was raised in a RECO discipline hearing against Michael Mugford of Mugford Realty Inc., in London, Ont. The hearing took place in October last year, and the decision was released by RECO a couple of weeks ago.

In the summer of 2000, Mugford was representing the purchasers in a transaction, and another agent, cryptically described by RECO as Registrant A, was acting for the sellers. "A" is a broker with ABC Realty. RECO apparently makes a habit of not naming innocent agents or brokers, even when they are only witnesses and haven't been charged with anything. In the context of this case, RECO's failure to provide A's real name is not only puzzling it simply makes no sense. But I digress.

Mugford drew up an agreement of purchase and sale for the anonymous property showing a purchase price of \$129,900 and a completion date of Sept. 15, 2000. Two conditions in the offer made the agreement conditional until Aug. 23, 2000 on arranging financing and completing a satisfactory home inspection.

There was also a Schedule A, which included this clause:

"The vendor agrees to rebate to the purchaser, by way of credit on closing, twenty five hundred dollars (\$2,500), for legal fees and other closing costs."

The RECO hearing panel decided that Mugford was fully aware that the purchasers had financial problems. "It seems clear in this case," wrote the panel, "that the 'credit on closing' provision was an attempt by Mugford to essentially artificially inflate the purchase price, and the \$2,500 was really a reduction on the stipulated price of \$129,900 in the guise of a credit on closing."

At the hearing, the evidence showed that the mortgage broker and the financial institution did not receive a copy of Schedule A showing the rebate, nor did their copy of the offer show that any schedule was supposed to be attached. The vendor's copy indicated that Schedule A was attached, but the purchaser's copy did not.

According to the findings of the panel, Mugford, in conjunction with the mortgage broker, one Ms Albert, arranged for his brother to momentarily lend the purchasers \$1,900 to artificially increase their bank balance for the purpose of showing it to a potential mortgagee. The money was repaid immediately after a bank statement was printed out showing the artificial balance.

When the financing and inspection deadlines in the offer expired on Aug. 23, the purchasers still did not have their mortgage arranged, and could have backed out of the offer at that point. Five days later, Mugford presented the purchasers with a document purporting to waive the inspection condition. He instructed the purchasers to backdate their signatures to Aug. 23. One purchaser refused, inserting the correct date of Aug. 28. The RECO panel accepted evidence that Mugford then altered the date to Aug. 23 and delivered the waiver to agent A.

Mugford's scheme came to light when agent A complained to RECO.

The panel made several findings of fact which resulted in a decision that Mugford had breached the RECO code of ethics:

Mugford did not submit Schedule A to the mortgage broker in an attempt to hide the rebate. The way in which Schedule A was concealed was a deliberate attempt to mislead the mortgagee about the overall price and the financial ability of the purchasers.

Mugford improperly backdated the waiver of conditions and misled agent A as to the date on which it was signed.

The scheme initiated by Mugford to change the purchasers' bank balance was "wholly inappropriate." This scheme, said the panel, "is nothing short of an attempt to fraudulently obtain mortgage financing."

Under the RECO code of ethics, real estate agents have an obligation to protect the public from fraud, misrepresentation or unethical practice. They must deal fairly, honestly and with integrity with the public and other agents.

They are required to protect and promote the best interests of their clients.

As well, an agent may not make any statement or participate in the creation of a document or statement that the agent knows is false or misleading.

RECO decided that Mugford had breached all these requirements and decided it was necessary to impose a penalty to discourage Mugford himself from similar activities in the future.

"What gives real estate sales persons and brokers a bad name," the panel wrote, "is activity in which there is a purposeful misleading of either mortgagees, purchasers, vendors ... fellow brokers, or anyone else involved."

Mugford was fined \$7,500 plus \$1,500 costs, suspended for three months and put on probation for two years.

He was lucky I don't think the penalty imposed goes far enough in protecting the public from similar activities by other agents.

Although the cash penalty is roughly the total commission on one transaction, the suspension period is relatively short.

Even though the vast majority of Ontario real estate agents are honest, other agents tempted to pull a "Mugford" scheme have now received a signal from RECO that if they are caught, they won't lose their licence.

A penalty imposed by a disciplinary body of a self-regulating profession must contain a strong element of general deterrence, so that others won't be tempted to engage in similar activities.

I think people like Mugford should be kicked out of the profession.

In my own law practice, I still regularly see agents attempting to create Mugford deals the Canadian equivalent of the Oklahoma's. (See 'Oklahoma swindle' is just plain real estate fraud and Beware the 'Oklahoma' swindle .)

RECO must state loudly and clearly that real estate professionals who participate in Mugford-like transactions will permanently lose their licences.

***Bob Aaron** is a Toronto real estate lawyer. www.aaron.ca ©Aaron & Aaron. All Rights Reserved.*