



## Professional Negligence

### The Situation

On April 6, 2017, Sharon Agent was issued a real estate salesperson license.

In 2023, Agent was representing the seller of real property. On March 30, 2023, Megan Buyer submitted an initial offer on the subject property in the amount of \$750,000 with an escalation clause that increased up to \$850,000.

On April 3, 2023, Agent received another offer from a different buyer in the amount of \$750,000 with an escalation clause that increased up to \$915,000.

Agent created an Excel spreadsheet containing the details of the offers received. However, when Agent entered the details into the spreadsheet, she mistakenly entered the \$915,000 offer as \$951,000.

On April 3, 2023, Agent, using the information from her spreadsheet, verbally notified Buyer's agent of the competing offer, and told her that the offer was for \$950,000. Because of this information, Buyer increased her escalation clause to reflect a maximum sales price of \$950,000.

Subsequently, Agent notified Buyer's agent that the seller accepted her offer. Around this time, the agent for Buyer learned that the competing offer was \$951,000, and she asked Agent why the seller chose Buyer's offer. Agent replied she believed it was because the seller met Buyer at an open house.

On April 26, 2023, closing occurred. Approximately one month later, Buyer realized that she was missing a copy of the competing offer which justified her escalation clause.

On June 13, 2023, Buyer requested a copy of the competing offer. According to Agent, this was the first time she received a request for a copy of the competing offer.

On June 14, 2023, upon looking through the files, Agent found the competing offer and realized her mistake for the first time. Agent informed Buyer's agent in writing of the mistake and the information was forwarded to Buyer by her agent.

## **The Investigation**

Buyer's escalation clause states, "Seller shall provide to Purchaser a complete copy of Other Offer used to justify the escalated sales price with this Addendum."

In her written response to this complaint, Agent's attorney stated that Agent forgot to send the competing offer to Buyer or her agent. However, neither Buyer nor her agent requested a copy of the competing offer. Agent stated that she made a mistake and upon realizing that mistake, informed Buyer's agent. Agent did not hide any information. Agent had been following the advice of her counsel and allowed her attorney to communicate on her behalf concerning a resolution of this situation.

## **The Result**

The Board determined Agent failed to exercise ordinary care (VA Code § 54.1-2131.A.4) during the transaction by relying on incorrect information from the Excel spreadsheet and failing to provide the competing offer to the purchaser pursuant to the terms of the escalation clause. Agent was fined in the amount of \$550. Agent was also required to complete six classroom hours of Board-approved Post-License education pertaining to Contract Writing.

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