



Bob Aaron bob@aaron.ca

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Agents, broker face fines in double-offer sale scheme

The Real Estate Council of Ontario has put Ontario's real estate agents and brokers on notice that if they participate in schemes to inflate the purchase price of property to secure financing, they are going to get caught and the penalties and publicity are going to sting.

Tiffany Edgecombe was a part-time salesperson associated with S. Realty Inc., a brokerage in the Greater Toronto Area. She wanted to buy a house, which was listed by Antonietta Mainella, an agent with another company.

With the assistance of Anthony Azan, who was then Edgecombe's broker at S. Realty, Edgecombe signed an agreement to buy a house for \$178,000.

During the conditional period, it became apparent that the planned down payment would not be available, and she could not get conventional 75 per cent financing.

Relying on some incredibly bad advice from a mortgage broker, Edgecombe signed a second agreement of purchase and sale for the same house seven days later the day the financing condition was to expire.

The purchase price in the new offer was increased to \$186,000, and the agreement was backdated to the original date of the \$178,000 purchase. Simultaneously, Edgecombe waived the financing clause, even though her down payment had evaporated.

Also prepared at the same time was an amendment to the second agreement of purchase and sale, deleting some of the included appliances and the broadloom which was never there in the first place and crediting the purchaser with \$8,000 in exchange. This, of course, brought the price back down to its original \$178,000.

The reason for the second agreement and the amendment, according to a RECO discipline panel, which heard the case a year later, was "not to change the price or otherwise change the structure of the (first) deal ... but was to inflate the purchase price for the purpose of Edgecombe being able to raise financing."

Ultimately, after she was turned down by the National Bank, which became aware of the two offers, Edgecombe was able to arrange high-ratio financing of \$183,000 from another bank a total of \$5,000 more than the real price she paid for the property. It appears the bank was not shown the amendment reducing the price by \$8,000.

After CMHC fees, Edgecombe would have received a net advance roughly equal to the original \$178,000 purchase price, making it the classic "nothing down" deal.

Peter Vass was a colleague of Edgecombe's at S. Realty. In the RECO decision, Vass is quoted explaining the structure of the transaction, which involved backdating documents, the existence of two agreements and amendment, which artificially reduced the price. Vass denied knowing about the first agreement but the RECO panel did not believe his denial.

Vass apparently told Antonietta Mainella, agent for the vendors, "this type of transaction was done all the time." He is quoted as telling Mainella that the double agreement was for "banking purposes," and that "it needed to be done." RECO also found that he told Mainella that her clients would not be harmed, since the deal would go through at \$178,000, and that "he did this thing all the time."

When the deal closed, National Bank, which held the vendor's mortgage and which refused to finance Edgecombe, filed a complaint with RECO about the conduct of all the agents involved.

Discipline complaints were filed against Edgecombe, the vendor's agent Antonietta Mainella, Edgecombe's broker Anthony Azan, and sales agent Peter Vass at S. Realty.

Edgecombe, Mainella and Vass were all found to be in violation of two rules of RECO's code of ethics Rule 10, which prohibits participating in the making of false documents or statements, and Rule 23, which bars unprofessional conduct.

Even though he was on holiday at the time of the second offer, Azan was found guilty of a breach of Rule 20, which makes him responsible for the professional conduct and actions of those members registered with him.

In the end, the RECO panel concluded that Vass "had to know" of the earlier \$178,000 offer, and that the "over financing scheme" was the reason for the second agreement and the amendment.

The panel decided that Edgecombe, even though inexperienced, knew or ought to have known it was wrong to backdate documents, and make a "false amendment" to an agreement of purchase and sale.

The panel found that Mainella, who only wanted to protect her vendor, should not have participated in a scheme "that was potentially going to mislead a financial institution."

When the appeals were over last fall, the appeal tribunal upheld the findings of liability but reduced the penalties. Following the appeal, each party was ordered to pay \$625 in costs plus varying administrative penalties. Edgecombe was ordered to pay \$3,750, Mainella \$2,500 (who did not appeal), Vass \$5,000, and Azan \$2,500. All but Mainella were placed on two years' probation of their licensing registration.

For me, the scariest part of the story is the statement by Peter Vass that "this type of transaction was done all the time." Unfortunately, the statement is all too true.

The only way to stamp out this type of behaviour is with tougher penalties. Agents who participate in double-offer schemes should have their licences lifted permanently.