

Case #5: I'm Too Busy to Check

REALTOR® Lynn, a residential specialist in a major metropolitan area, spent several weeks each year in a cabin in the north woods she had inherited from a distant relative. Always on the lookout for investment opportunities, she paid careful attention to “for sale” signs, online ads, and local brokerage websites in the area.

Returning from the golf course one afternoon, REALTOR® Lynn spotted a dilapidated “for sale” sign on an otherwise-attractive wooded lot. She stopped to look at the sign and was able to discern REALTOR® Zach’s name. Returning to her cabin, she looked online to locate REALTOR® Zach and his company website and she found detailed information about the lot seen that afternoon.

She e-mailed REALTOR® Zach and asked for information about the lot, including its dimensions and asking price. Several days later he responded, simply stating, “That listing expired.”

The following day REALTOR® Lynn, hoping to learn whether the lot was still available, contacted REALTOR® Steve, another area real estate broker. “As it turns out, we have an exclusive listing on the property you’re interested in,” said REALTOR® Steve. In response to her questions, REALTOR® Steve advised that he had had an exclusive listing on the property for almost six months. “That’s funny,” responded REALTOR® Lynn, “REALTOR® Zach has a ‘for sale’ sign on the property and information about it on his website. Looking at his website, I got the clear impression that he still had that property listed.”

While the wooded lot proved to be out of REALTOR® Lynn’s price range, REALTOR® Zach’s “for sale” sign and website were still on her mind when she returned home. Ultimately, she contacted the local association of REALTORS® and filed an ethics complaint alleging that REALTOR® Zach’s “for sale” sign, coupled with his offering information on his website made it appear as if the wooded parcel was still listed with his firm, when that had not been the case for over six months. REALTOR® Lynn noted that this conduct, in her opinion, violated Article 12 since REALTOR® Zach was not presenting a “true picture” in his public representations and was, in fact, advertising without authority, a practice prohibited by Article 12, as interpreted by Standard of Practice 12-4.

At the hearing, REALTOR® Zach claimed that failure to remove the “for sale” sign was simply an oversight, and if anyone was to blame, it was his personal assistant who was responsible

for removing signs and lockboxes from expired and sold listings. Turning to the stale listing information on his website, he acknowledged that information about his former listing had continued to appear for more than six months after the listing had expired. "REALTORS® have better things to do than constantly inspect their websites to make sure everything is absolutely, positively up-to-the-minute." "If we did that, none of us would have time to list or sell," he concluded.

What verdict do you think the hearing panel came to; IN violation or NOT in violation of Article 12?

Should any other Articles of the Code be applied to their decision?

Case Study #5 ANSWER:

The hearing panel disagreed with REALTOR® Zach's reasoning. Information on REALTORS®' websites can be updated on a regular basis and corrected if mistakes occur. The panel concluded that the continued presence of information about REALTOR® Zach's former listing six months after expiration on his website, coupled with the continued presence of the "for sale" sign on the wooded lot, did not present the true picture required by Article 12, and was inconsistent with the obligation to have authority to advertise contemplated by Article 12 as interpreted by Standard of Practice 12-4. REALTOR® Zach was found in violation of Article 12.

