

NATIONAL ASSOCIATION OF REALTORS®
Code of Ethics Video Series

Case Interpretations Related to Article 11

Note: The following information is reprinted from the current NATIONAL ASSOCIATION OF REALTORS® *Code of Ethics and Arbitration Manual*.

Case #11-1: Appraiser's Competence for Assignment (Revised May, 1988.)

REALTOR® A sold a light industrial property to Buyer B, a laundry operator. Several months later, Buyer B engaged REALTOR® A's services to appraise the property and to supply an appraisal report for use in possible merger with another laundry. REALTOR® A carried out this appraisal assignment and submitted his report. Buyer (now Client) B was dissatisfied with the report feeling that the valuation, in comparison with the market price that he had paid was excessively low. Client B then engaged an appraiser specializing in industrial property, and after receiving the second appraisal report, filed a complaint with the Board of REALTORS® charging REALTOR® A with incompetent and unprofessional service as an appraiser.

At the hearing, questioning established that REALTOR® A could cite no other industrial property appraisal he had made, and that his appraisal experience had been limited exclusively to residential property. The hearing also established that when the client proposed the appraisal, REALTOR® A had readily accepted the assignment and that he had at no time disclosed the extent and limitations of this appraisal experience with his client.

REALTOR® A was found by the Hearing Panel to be in violation of Article 11.

Case #11-2: Obligation to Disclose Assistance in Appraisal (Revised November, 2001.)

REALTOR® A completed an appraisal of a large house for Client B and submitted an appraisal report. In connection with a mortgage loan application, the appraisal report came to the attention of three other REALTORS®. One of them, REALTOR® C, filed a complaint with the local Board of REALTORS®, charging REALTOR® A with violation of Article 11 of the Code of Ethics. The complaint stated that REALTOR® A, while engaged in appraising Client B's property had called REALTOR® C and asked for information concerning residential property values in the area where Client B's property was located; that REALTOR® C had answered the questions; and that REALTOR® A's appraisal report had failed to acknowledge this assistance provided by REALTOR® C.

At the hearing, REALTOR® A protested that REALTOR® C was misreading Article 11, which is concerned entirely with conditions that must be met when a REALTOR® undertakes an appraisal that is outside the field of his experience. REALTOR® A established the fact that he had many years of successful experience as an appraiser of residential property in the area; that he specialized in that category of appraisal; that he had called a number of REALTORS® and officers of mortgage lending institutions to ask general questions about current residential values in the

particular neighborhood in keeping with his usual practice; that he did not consider the courtesy of responding to general questions of this kind as constituting formal assistance in making an appraisal that is required to be identified under the terms of Article 11.

The Hearing Panel concluded that REALTOR[®] A's defense was valid, and that his action did not violate Article 11.

Case #11-3: Identification of Contributor to Appraisal (Revised November, 2001.)

REALTOR[®] A, who had made a number of residential and farm appraisals for Client B, a bank, was asked to appraise the real property of a corporation that operated two extensive industrial parks. REALTOR[®] A made his appraisal of open land belonging to the corporation for future development. With respect to specialized industrial structures included in the assignment, he engaged the XYZ firm of industrial engineers to make a study of obsolescence and of current reproduction costs leading to conclusions. The report on this study was incorporated into REALTOR A's appraisal report to Client B, without identifying the XYZ firm as a contributor to the report.

Sometime after the submission of the report, Engineer C, a member of the XYZ firm, was invited to speak on an appraisal panel arranged by the local Board of REALTORS[®]. During his talk he used as an illustration some of the industrial properties that had figured in REALTOR[®] A's appraisal report. Following the program, in informal conversation with Engineer C, REALTOR[®] B learned of REALTOR[®] A's action in incorporating the engineering firm's conclusions into his own appraisal without identification of the firm and its contributions to the assignment. REALTOR[®] B then filed a complaint against REALTOR[®] A alleging violation of Article 11 of the Code of Ethics. After examining the facts as set out above, the complaint was referred by the Grievance Committee for hearing before a panel of the Board's Professional Standards Committee.

At the hearing, REALTOR[®] A took the position that he had not violated Article 11 because the essence of the appraisal assignment had been to exercise his judgment as an appraiser, and that he had not engaged any other person to exercise judgment in connection with the assignment. He had simply employed the XYZ engineering firm, he said, to make certain conclusions as to the extent of obsolescence in properties and as to the current cost of reproducing them. Conceding that he had incorporated the XYZ firm's report into his own appraisal report, REALTOR[®] A contended that this material was only incidental, and that the essential appraisal function of arriving at a valuation was entirely his own work. He stated further that he had paid the XYZ firm for its services and felt that relieved him of any obligation to identify the firm in his appraisal report.

During the hearing it was established that REALTOR[®] A had no previous experience in appraisal of industrial property, and that he had not disclosed this to Client B at the time he accepted the assignment.

The Hearing Panel concluded that REALTOR[®] A's defense was insufficient; that the appraisal

process includes the findings and calculations that support judgment; that the XYZ firm's conclusions had constituted a major element of the appraisal report; that under the requirements of Article 11, REALTOR® A should have identified the firm and its contribution.

REALTOR® A was found in violation of Article 11.

Case #11-4: Disclosure of Limited Appraisal Experience (Reaffirmed May, 1988.)

REALTOR® A was asked by Client B, an officer of a bank, to appraise an office building. In discussing the matter, REALTOR® A pointed out that while he was an experienced appraiser, he had never appraised an office building. Client B expressed his confidence in REALTOR® A, based on years of satisfactory service in appraising residential property, and said that notwithstanding REALTOR® A's lack of previous experience in appraising an office building, the bank wanted his judgment and asked him to accept the assignment to appraise the office building.

Accordingly, REALTOR® A undertook the assignment, and completed his appraisal report. The report later came to the attention of REALTOR® C, who complained to the Board of REALTORS® that REALTOR® A had violated Article 11 of the Code of Ethics by taking an appraisal assignment outside the field of his experience without obtaining the assistance of an authority on office buildings.

At the hearing, Client B appeared as a witness for REALTOR® A and stated that the assignment had been given to REALTOR® A after he had disclosed his lack of previous experience in appraising office buildings, and that the client was entirely satisfied by the manner in which REALTOR® A had completed his assignment.

The Hearing Panel concluded that Client B's statement completely exonerated REALTOR® A of any violation of Article 11, since it was clear that he had disclosed his lack of previous experience in appraising the type of property in question, and that he had been given the assignment after this disclosure was made to the client.

Case #11-5: Appraiser's Competence to Assignment (Revised November, 2001.)

Client A engaged REALTOR® B to appraise an apartment house, indicating that he planned to put the building on the market. When the appraisal was submitted, REALTOR® B solicited the listing of the building at the price shown as current market value in his appraisal. Client A asked for time to think it over. Surprised at what he felt to be a low valuation in REALTOR® B's appraisal, Client A went to REALTOR® C, recounted his business relations with REALTOR® B, and engaged REALTOR® C to make a second appraisal of the building. REALTOR® C submitted his appraisal which was 25% higher than REALTOR® B's valuation. Client A listed the property for sale with REALTOR® C at his appraised value and the building was shortly sold by REALTOR® C at that price.

REALTOR® C filed a complaint against REALTOR® B charging a violation of Article 11 in having undertaken an appraisal that was outside the field of his experience and competence.

At the hearing, at which a written statement by Client A was entered into the record, all the facts set out above were established.

Questioning revealed that REALTOR® B had engaged in very little appraisal work, and never before with respect to any kind of property except single family houses, that he had not obtained qualified assistance, and that he had not acquainted Client A with the limited extent of his experience.

It was the conclusion of the Hearing Panel that REALTOR® B was in violation of Article 11 because he had undertaken an appraisal for which he was not qualified, without obtaining competent assistance and without advising his client as to the facts respecting his limited experience as an appraiser.

Case #11-6: Appraiser's Obligation to Consider All Factors of Value (Revised November, 2001.)

Client A owned a commercial property in the path of a proposed street construction project. He was approached by a representative of the city government to open negotiations for its purchase. Client A engaged REALTOR® B to make an appraisal of the property. When Client A received the appraisal report he felt that it was unrealistic and was reluctant to use it in negotiations with the city. He then engaged REALTOR® C to make another appraisal. REALTOR® C's appraisal resulted in a considerably higher value which seemed plausible to Client A, who used it in a satisfactory negotiation with the city, avoiding eminent domain procedures. Following completion of the transaction, Client A filed a complaint with the local Board of REALTORS® charging REALTOR® B with violating Article 11 of the Code of Ethics by not considering all factors affecting the value of property in his appraisal on behalf of Client A. The Grievance Committee reviewed the complaint and forwarded the matter to the professional Standards Committee for a hearing.

At the hearing, REALTOR® B defended himself by stating that he was primarily a residential broker; that he knew comparable market values in the areas by virtue of his activities as a broker; that he considered comparable sales to be the only significant indicator of market value; that the cost approach and the income approach of determining value were academic if the appraiser could produce a valuation in line with the price that a given property would bring at the time in the market; that his valuation had been made accordingly, and that he was willing to stand by it.

In reviewing REALTOR® C's appraisal, the Hearing Panel noted that he had considered Client A's property as an investment property, and had determined not only comparable market values as indicated by recent sales of similar property in similar locations, but also had fully taken into account the current reproduction cost of an investment property of similar nature; that he had capitalized the net investment return of Client A's property, and had arrived at his valuation by giving weight to all three of these basic methods of appraisal. The panel also noted that the

appraisal had definitely been a factor in the city's agreement to purchase, although the city was empowered to use eminent domain action if it was judged that the owner's purchase price was excessive. Part of REALTOR® C's appraisal had commented upon relatively low current market values in the area because of adverse environmental circumstances, but balanced this with its analysis of the income return on the property to the investor.

It was concluded by the Hearing Panel that REALTOR® B had violated Article 11 of the Code of Ethics by not taking all pertinent factors affecting value into consideration in making his appraisal.

Case #11-7: Appraisal Fee as Percentage of Valuation (Transferred to Article 1 November, 2001.)

Case #11-8: REALTOR®'s Obligation to Comply with USPAP (Adopted November, 1995. Deleted November, 2000.)

Case #11-9: REALTOR®'s Obligation to Comply with USPAP (Adopted November, 1995. Deleted November, 2000.)

Case #11-10: REALTOR®'s Obligation to Disclose Present or Contemplated Interests (Adopted May, 1997. Revised November, 2000.)

Client A, an owner, needed to sell a property. She approached REALTOR® B to list the property. They agreed to the terms of the listing and the property was listed.

An offer was made and was accepted by Client A. After the prospective purchaser completed the loan application, REALTOR® B was contacted to appraise the property. When the lender was preparing the closing statement, the lender became aware that the listing broker was also the appraiser and filed a complaint with the Board of REALTORS® alleging that REALTOR® B had failed to disclose in the appraisal that he had an interest in the property, specifically seeing that the sale closed. The complaint was referred by the Grievance Committee for hearing before a panel of the Board's Professional Standards Committee.

At the hearing, REALTOR® B protested that the lender was misreading Article 11, as interpreted by Standard of Practice 11-1, claiming that "any present or contemplated interest" referred only to an ownership interest. REALTOR® B concluded that the listing commission had been earned when a ready, willing, and able purchaser contracted to purchase the property and that the appraisal process was separate and distinct from the brokerage process.

The Hearing Panel concluded that REALTOR[®] B's defense was specious and because he was the listing agent REALTOR[®] B was biased in favor of Client A since a successful transaction would benefit REALTOR[®] B in the form of a commission.

REALTOR[®] B was found in violation of Article 11.

Case #11-11: REALTOR[®]'s Obligation to Disclose Present or Contemplated Interest (Adopted May, 1997. Revised November, 2000.)

Owner A was considering refinancing a property. Client B, a lender, ordered an appraisal from REALTOR[®] C. The appraisal report was completed and later Owner A decided to sell the property instead of refinancing it. Owner A contacted REALTOR[®] C who listed the property. An offer was made that was accepted by Owner A.

At the loan application, the prospective purchaser told the lender, Client B, that a recent appraisal on the property had been done for Client B. When the lender became aware that the listing broker was also the appraiser, the lender filed a complaint with the Board of REALTORS[®] alleging that REALTOR[®] C had not disclosed her "present or contemplated interest" in the property as required by Article 11, as interpreted by Standard of Practice 11-1. The complaint was referred by the Grievance Committee for hearing before a panel of the Board's Professional Standards Committee.

At the hearing, a written statement from Owner A containing all the facts above was entered into evidence. REALTOR[®] C stated that the appraisal had been completed in accordance with Standard of Practice 11-1 and it was only after Owner A decided to sell, rather than refinance, that there were any discussions about REALTOR[®] C representing the owner in the sale of the property.

REALTOR[®] C stated that the owner had been appreciative of the time that she had spent discussing the subject's neighborhood and existing market conditions, and that the owner had decided that he wanted someone really knowledgeable to represent him in the sale of his property.

Because REALTOR[®] C's disclosures regarding present and contemplated interests were true at the time they were made in connection with the appraisal, the Hearing Panel concluded that REALTOR[®] C was not in violation of Article 11.