# 2014 Findings of Fact Exercise

**Instructions:** Read the following case study and, working with your tablemates, complete the decision that follows.

REALTOR® John is a member of the board of directors at the Blue Sky Board of REALTORS®. He is the broker principal and owner of John Realty, LLC, and he has 20 people licensed or affiliated with him at John Realty, LLC, according to the regulatory body records, including Laura who is not a REALTOR® and who he has not paid the non-member dues assessment for. John, being very busy and relying on his staff, has not submitted the annual certification for the last five years that the board requires be submitted no later than January 31 each year. The broker must, per the bylaws, certify a complete listing of all individuals licensed or certified in the REALTOR®’s office.

John has also established a separate legal entity which he owns, a limited function referral office (LFRO), called John’s Referrals. He has 10 people licensed with him at John’s Referrals, including Curly, Mo, and Larry. Pursuant to the board’s bylaws, the 10 people licensed with him at John’s Referrals must be “engaged exclusively in soliciting and/or referring clients and customers to the REALTOR® for consideration on a substantially exclusive basis” and that REALTOR® must certify annually that all licensees affiliated with the LFRO are solely engaged in referring clients and customers and are not engaged in listing, selling, leasing, renting, managing, counseling, or appraising real property. He has submitted his certification in January for the referral company.

REALTOR® John is a web designer and on April 1 he launches his new website for John Realty, LLC. On that website he depicts Laura, Curly, Mo, and Larry as REALTORS® along with all the other licensees in his real estate office, “available to help you with all of your real estate needs.” Another REALTOR®, Julie, with a different firm, brings this to the board’s attention. Staff follows up with John, writing to him on April 3, to request the nonmember dues assessment from John as the designated REALTOR® for Laura, Curly, Mo, and Larry and advises John that he cannot refer to these individuals as REALTORS® when they are not REALTORS®. Staff also tells John that he owes three months of MLS fees for Laura because she was licensed with him from the beginning of the board’s fiscal year (beginning January 1) and she will be added to his MLS bill going forward if she remains licensed with John Realty, LLC.

On May 3, staff bills REALTOR® John for the nonmember dues assessment for Laura, Curly, Mo, and Larry, for four months of MLS user fees for Laura (January through April), and fines REALTOR® John consistent with the MLS rules $500 for not advising MLS staff that Laura was licensed with him within 10 days of the date Laura joined his firm (which was last July). Consistent with Section 9.l of the association’s MLS rules, John asks for a hearing, saying he should not be charged $500.

The grievance committee files an ethics complaint against John alleging a violation of Article 12 (depicting Laura, Curly, Mo, and Larry as REALTORS® when they are not REALTORS®), Article VIII, Section 1 of the board bylaws for misusing the term REALTOR®, and Article VI, Section 12 for not certifying annually a complete listing of all individuals licensed or certified with John at John Realty, LLC as required by the bylaws. At the hearing, the grievance committee submits into evidence a screen shot of John’s web site depicting Laura, Curly, Mo, and Larry as REALTORS® willing to “help you with all of your real estate needs,” a letter from the Membership Committee chair confirming that Laura, Curly, Mo, and Larry were not REALTORS® according to the association’s records and the National REALTORS® Database System (NRDS), letters from staff informing John that it was a misuse of the REALTOR marks to depict someone as a REALTOR® when they were not REALTORS®, and a letter from the Membership Committee chair confirming that John did not certify this year a complete listing of all individuals licensed or certified with him at John Realty, LLC.

**Form #E-11**

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| **Blue Sky Board of REALTORS®** |
| Board or State Association |

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| --- | --- | --- | --- | --- | --- | --- |
| **8576 Daisy Drive** |  | **Somewhere** |  | **USA** |  | **00000** |
| Address |  | City |  | State |  | Zip |

**Decision of Ethics Hearing Panel**

**of the Professional Standards Committee**

Filed \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_

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| Grievance Committee |  | REALTOR® John Smith |
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| Complainant(s) |  | Respondent(s) |

**Findings of Fact:** The hearing panel finds the following facts in support of its conclusion regarding the alleged violations of the Code of Ethics:

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**Conclusions of the Hearing Panel:** We, the members of the Hearing Panel in the above-stated case, find the Respondent (in violation) (not in violation) of Article(s) \_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the Code of Ethics, (in violation) (not in violation) of Section \_\_\_\_\_\_\_ of the MLS rules, and (in violation) (not in violation) of Article(s) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the association’s bylaws.

**Prior Violations, if Any:**

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**Recommendation for Disciplinary Action, if Any, if Violation Found:** We recommend to the Board of Directors the following action:

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**Rationale for Discipline, if Any, if Violation Found:** (e.g., previous violations):

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**Consequences for Noncompliance with Discipline:**

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The decision, findings of fact, and recommendation(s) preceding were rendered by an ethics Hearing Panel comprising the following members whose signatures are affixed below. The hearing took place on

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20 \_\_\_\_\_\_\_\_\_\_.

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|   | , Chairperson |  |   | , Member |
| Type/Print Name |  | Type/Print Name |
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| Signature |  | Signature |
|   | , Chairperson |  |   | , Member |
| Type/Print Name |  | Type/Print Name |
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|   | , Chairperson |  |   | , Member |
| Type/Print Name |  | Type/Print Name |
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| Signature |  | Signature |

**Notice:** This decision is not final and is subject to certain rights of both the complainant and the respondent.

**Complainant’s Rights:** Within twenty (20) days of transmittal of this notification, the complainant may file an appeal with the President for a hearing before the Directors based only upon an allegation of procedural deficiencies or other lack of procedural due process that may have deprived the complainant of a fair hearing. A transcript or summary of the hearing shall be presented to the Directors by the Chairperson of the Hearing Panel, and the parties and their counsel may be heard to correct the summary or the transcript. No new evidence will be received (except such new evidence as may bear upon a claim of deprivation of due process), and the appeal will be decided on the transcript or summary.

**Respondent’s Rights:** Within twenty (20) days of transmittal of this notification the respondent may file an appeal with the President for a hearing before the Directors challenging the decision and/or recommendation for discipline. The respondent’s bases for appeal are limited to (1) a misapplication or misinterpretation of an Article(s) of the Code of Ethics, (2) procedural deficiency or any lack of procedural due process, and (3) the discipline recommended by the Hearing Panel. A transcript or summary of the hearing shall be presented to the Directors by the Chairperson of the Hearing Panel, and the parties and their counsel may be heard to correct the summary or transcript. No new evidence will be received (except such new evidence as may bear upon a claim of deprivation of due process), and the appeal will be decided on the transcript or summary.

**Final Action by Directors:** Both the complainant and respondent will be notified upon final action of the Directors.

NOTE TO HEARING PANEL: Respondents may only be found in violation of Articles they have been formally charged with having violated. If the respondent is found in violation, the Hearing Panel will consider all records of previous violations and sanctions imposed, whether by the current or by any other Association, when determining discipline and the rationale for the current action can be provided to the parties and the Directors as part of the decision. The Hearing Panel’s consideration will include whether prior disciplinary matters involve discipline that was held in abeyance and that will be triggered by a subsequent violation (including the matter currently under consideration by the Hearing Panel).

(Revised 11/14)