

I Forwarded It Already...



the facts

Michael Harrod, a real estate agent, assisted a couple, Mr. and Mrs. Clark, who were looking for a home that was both what they wanted and within their price range. They finally made an offer on a home – but were outbid. After months of continued searching, they ultimately made a successful bid on a home at the top of their price range.

Mr. Harrod recommended they obtain a home inspection and provided the names of several inspectors. Mr. Harrod and the Clarks were present during the inspection. Mr. Harrod witnessed the discussion between the Clarks and the home inspector regarding his findings. It turned out there were a number of items identified that needed repair, but the Clarks told Mr. Harrod they could perform the repairs themselves if necessary.

The Clarks asked Mr. Harrod to provide them with a hard copy of the home inspection report. Mr. Harrod contacted the inspector who later sent the report to him via e-mail. Mr. Harrod then forwarded the email to the Clarks. The closing occurred without any problems.

Approximately one month after the closing, Mr. Harrod received a call from the Clarks who were angry because they claimed they never received a copy of the inspection report. The Clarks said the roof of their home was defective and had incurred related water damage, resulting in significant repair costs. Mr. Harrod provided them with another copy of the inspection report, which indicated the roof was in need of some repairs.

the result

The Clarks sued Mr. Harrod, seeking damages three times the purchase price of the house. They alleged Mr. Harrod breached his fiduciary duty by failing to provide them with a copy of the home inspection report and review the results with them.

Mr. Harrod was unable to produce the forwarded email containing the inspection report he sent to the Clarks. Without written evidence that a copy of the inspection report had been provided to the Clarks, it was not possible to effectively refute their allegation. The case was settled for \$25,000.

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Risk Factor #1

Written evidence is critical to the defense of the actions of real estate agents. All discussions with clients regarding suspected or known property defects should be timely documented via confirming e-mails or other written communications. While it was not at issue in this case, agents should send confirming letters or e-mails providing clients with the names of several qualified inspectors to provide protection from claims alleging negligent referral, in the event the inspector does not identify a property defect that is discovered after closing.

Risk Factor #2

Agents also should retain evidence of when and how clients were provided with copies of inspection reports. In this case, had Mr. Harrod simply obtained and retained a signed and dated receipt evidencing that the Clarks had been provided with a copy of the inspection report, this claim would have been defensible.



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