

MINNESOTA ASSOCIATION OF REALTORS®  
5750 Lincoln Drive  
Edina, Minnesota 55436

**Decision of Ethics Hearing Panel  
of the Professional Standards Committee**

**Case # PS-16-29**

Transmitted August 3, 20 16

Sutherland & Presley

Broadwater

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: (use additional pages if required):

See attached.

**Conclusions of the Hearing Panel:** We, the members of the Hearing Panel in the above-stated case, find the Respondent

☒ in violation of Article(s) 15 of the Code of Ethics.

☐ not in violation of Article(s) \_\_\_\_\_ of the Code of Ethics.

We further find See attached.

**Prior Violations, if any:** See attached.

**Recommendation for Disciplinary Action, if Any, if Violation Found:** We recommend to the Ratification Panel the following action:

See attached.

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

Consequences for Noncompliance with Discipline: See attached.

The findings of fact, conclusions, and recommendation(s) preceding (the "Decision") were rendered by at least a simple majority of the ethics Hearing Panel comprised of the following members, whose signatures and votes are below.

The hearing took place on Monday, July 25, 2016.

Dan Wagner ☒ majority opinion / ☐ dissent

Dan L. Wagner, Chair

Michelle Babcock ☒ majority opinion / ☐ dissent

Michelle Babcock, Member

Greg Hostetter ☒ majority opinion / ☐ dissent

Greg Hostetter, Member

Matt Gillard ☒ majority opinion / ☐ dissent

Matt Gillard, Member

Mary Lindgren ☒ majority opinion / ☐ dissent

Mary Lindgren, Member

**Notice:** This Decision is final, however it 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 Administrator for a hearing before an Appeal Tribunal 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 Appeal Tribunal 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. Any appeal must be accompanied by a deposit of \$250.00.

**Respondent's Rights:** Within twenty (20) days of transmittal of this notification, the Respondent may file an appeal with the Administrator for a hearing before an Appeal Tribunal challenging this 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 Appeal Tribunal 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. Any appeal must be accompanied by a deposit of \$250.00.

**Final Action:** Both the complainant and respondent will be notified upon final action of the Ratification Panel or Appeal Tribunal.

**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 within the previous three years, whether by the current or by any other Board or Association, when determining discipline and the rationale for the current action can be provided to the parties and the Ratification Panel or Appeal Tribunal 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).

**Decision of Ethics Panel of the  
Professional Standards Committee**

**Amy Presley and Joe Sutherland, REALTOR®, Complainants**

**vs.**

**Joshua Broadwater, REALTOR®, Respondent**

**Case # PS-16-29**

An Ethics Complaint was submitted by Amy Presley and Joe Sutherland (Complainants) on April 27, 2016, alleging that Joshua Broadwater (Respondent) violated Article 15 of the Code of Ethics of the National Association of REALTORS®. The Grievance Review Panel met on May 4, 2016, and moved the Complaint forward to a full hearing on Article 15.

A hearing was scheduled for June 22, 2016, and the Respondent objected to the hearing date on June 21, 2016, noting that he did not have proper notice of the hearing date. The Chair of the Hearing Panel postponed the hearing, which was rescheduled and held on July 25, 2016. The Hearing Panel consisted of Chair Dan Wagner, with Michelle Babcock, Greg Hostetter, Matt Gillard and Mary Lindgren as panelists.

Complainants were present for the hearing.

Respondent did not provide a written statement or response to the Complaint, but did appear at the hearing and provided testimony.

Also present was Jonathan Kopecky, Associate Counsel for the Minnesota Association of REALTORS®.

The Respondent was charged with an alleged violation of Article 15 of the Code of Ethics of the National Association of REALTORS®.

**Article 15**

Realtors® shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices. (*Amended 1/12*)

**• Standard of Practice 15-2**

The obligation to refrain from making false or misleading statements about other real estate professionals, their businesses, and their business practices includes the duty to not knowingly or recklessly publish, repeat, retransmit, or republish false or misleading statements made by others. This duty applies whether false or misleading statements are repeated in person, in writing, by technological means (e.g., the Internet), or by any other means. (*Adopted 1/07, Amended 1/12*)

**Findings of Fact:** The Hearing Panel finds the following facts in support of the conclusion regarding the alleged violations of the Code of Ethics.

On or about April 27, 2016, The Respondent posted a screenshot of an email from Ms. Presley on his Facebook page with the following statement:

*“Just another awesome email from your lovely friends of counselor realty of Rochester. For the record we have called, sent emails, with a two week lag time on their end and I personally reached out to Joe. We are still waiting to get our full commission check. It was emails like this that I went out on my own.*

*Brahlen Homes has a different philosophy when it comes to real estate. We welcome anyone into our real estate circle and try to save you as much money on your next deal as possible. It’s emails like this that make me laugh and wonder.”*

Respondent indicated that he placed this screen shot and statement on his Facebook page for about 36 hours and did so because the Complainants had pushed him to “that place” with their requests for a completed file and paperwork on a transaction he closed while still licensed with the Complainants’ brokerage. The Respondent stated that he took the post down after reflecting on its contents, before he received a cease and desist letter from the Complainants’ attorney. The Complainants believe that their business and reputation were harmed by the statement and note one post by a consumer, who read the subject statement and wrote, in part, “Thanks for the heads up-I won’t be doing business with them-ever!!”

The Respondent admitted to posting the email and the statement, and he indicated that the statements themselves are not factually accurate. The post implied that the Complainants were unwilling to pay out the commission owed and delinquent in his requests to get paid. However, the Respondent admitted, through testimony, that in reality, the \$800 commission was not worth his time, as he is working 80 hours a week dealing in thousands of dollars of pay. The respondent also admitted that he was paid when he completed the paperwork required by law to be turned in to a real estate broker in a real estate transaction and retained in a brokers file.

### **The Conclusion of the Hearing Panel:**

The Hearing Panel in the above stated case, by a unanimous vote, found Respondent Joshua Broadwater **in violation** of Article 15 of the Code of Ethics of National Association of REALTORS®.

The Hearing Panel determined that there was a violation of Article 15 because Respondent deliberately posted a false and misleading post on his Facebook page regarding the business practices of the Complainants, to their detriment.

**Prior Violations:** Respondent has no prior violations in the past three years.

**Recommended Discipline:** A letter of reprimand shall be placed in the membership file of Respondent for three years. Respondent shall also pay a fine of \$1000.00 to the Minnesota

Association of REALTORS® on or before January 31, 2017. Additionally, the 30-hour Minnesota Broker Training Course approved by the Minnesota Department of Commerce must be retaken and completed, with proof provided to the Minnesota Association of REALTORS®, on or before January 31, 2017. Finally, the Panel determined that the Department of Commerce will be given notice of the violation, and a letter be sent to the Commerce Department for its consideration.

If Respondent does not pay the above noted fine to the Minnesota Association of REALTORS®, and does not complete the above noted education and provide proof of completion to the Minnesota Association of REALTORS® of the same on or before January 31, 2017, his fine will increase to \$13,600, and his Minnesota Association of REALTORS® membership will be suspended, including MLS services, until such time as the fine is paid in full and proof of his education is received. If the fine is not paid within two months after the due date, Respondent's membership shall be terminated at the discretion of the Executive Committee. Three months after the due date, Respondent's membership shall automatically terminate unless within that time the amount due is paid in full.

**Rationale for Discipline:** The Hearing Panel found that while this was Respondent's first violation in his limited practice, it was substantially damaging, and his lack of contrition and respect for the Code of Ethics process was discouraging. The Respondent made it clear that \$800 was not worth his time, so the fine is a number in excess of that. The education requirement stemmed from genuine concern that the Respondent now had no oversight and had little knowledge of the requirements for closing a file. The concern for the Hearing Panel that the Respondent would reject the findings of the Panel and refuse to accept the discipline is the reason why the fine for failing to comply is so high, one thousand dollars for each hour posted on Facebook. The lack of understanding of what is required by law of agents and brokers in completing a real estate transaction along with the posting on the internet of a disagreement for public display are the reasons for submission to the Department of Commerce.

**The findings of fact and decision of the hearing panel is considered confidential and will only be shared with the parties, legal or REALTOR® counsel, panelists and staff of the Association unless otherwise directed by the by-laws and regulations of the Minnesota Association of REALTORS®**

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### Statement of Confidentiality

#PS-16-29

In the case of Sutherland & Presley vs. Broadwater

All panel and alternate members are hereby notified that the report and findings of this panel are considered confidential. You must leave all materials related to this case with the Hearing Administrator so they can be properly discarded. Please be advised you are not to discuss this case with anyone, including any of the involved parties. Should a party call you after this proceeding, please direct them to call the Hearing Administrator. Any conversations by you on this case outside the hearing could be grounds for an appeal and dismissal from the Professional Standards Committee.

Dan Wagner  
(Type/Print Name)

Dan Wagner, Chair  
(Signature)

Michelle Babcock  
(Type/Print Name)

Michelle Babcock, Member  
(Signature)

Greg Hostetter  
(Type/Print Name)

Greg Hostetter, Member  
(Signature)

Matt Gillard  
(Type/Print Name)

Matt Gillard, Member  
(Signature)

Mary Lindgren  
(Type/Print Name)

Mary Lindgren, Member  
(Signature)