

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

Ethics Complaint

Grievance Complaint Case # PS-16-29

Date Filed 4/27/2016

Joe Sutherland

Joshua Broadwater

Amy Presley

Complainant(s)

Respondent(s)

Complainant(s) charge the Respondent(s) with the following:

1. An alleged violation of Article(s) of the Code of Ethics as supported by Standard of Practice(s) (if any)

Joshua Broadwater

Article 15: Josh posted on Facebook on April 27th a screenshot of a message from Counselor Realty of Rochester's Vice President Amy Presley to himself with an introduction to the screenshot which read: 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 commissions check. It was emails like this that I went out on our 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 is emails like this that make me laugh and wonder.

AND/OR;

2. Other membership duty as set forth in the bylaws of the Minnesota Association of REALTORS®.

Complainant(s) allege(s) that the above charge(s) (is/are) supported by the attached statement, which is signed and dated by the complainant(s) and which explains when the alleged violation(s) occurred and, if a different date, when the complainant(s) first knew about the alleged violations.

This complaint is true and correct to the best knowledge and belief of the undersigned and is filed within one hundred eighty (180) days of the time that the alleged offense and facts constituting the matter complained of could have been known by the complainant in the exercise of reasonable diligence or within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later.

Date(s) alleged violation(s) took place: 4/26/2016

Date(s) you became aware of the facts on which the alleged violation(s) (is/are) based:
4/27/2016

I (we) declare that to the best of my (our) knowledge and belief, my (our) allegations in this complaint are true.

The following documentation has been submitted in support of my complaint:

20160427_113447.pdf

Mandatory Questions

Are the circumstances giving rise to this ethics complaint involved in civil or criminal litigation or in any proceeding before the state real estate licensing authority or any other state or federal agency?

No

Please indicate if you have already filed a complaint against the Respondent(s) named in this complaint with another local association of REALTORS®?

No

Complainant's Acknowledgements

I understand that should the Grievance Review Panel dismiss this ethics complaint in part or in total, that I have twenty (20) days from transmittal of the dismissal notice to appeal the dismissal to the Minnesota Association of REALTORS® Appeal Tribunal. I understand and agree that all communication pertaining to this complaint may be sent to the e-mail address listed below and I am solely responsible for ensuring such emails are not blocked.

Name: Joe Sutherland

Signature: Joe Sutherland

Date: 4/27/2016

Email: jsutherland@counselorrealty.com

Phone: 507-285-9400

Address: 3338 19th St Suite 102, Rochester, MN 55901

Name: Amy Presley

Signature: Joe Sutherland

Date: 4/27/2016

Email: aprelsey@counselorrealty.com

Phone: 507-285-9400

Address: 3338 19th St NW Suite 102, Rochester, MN 55901



11:34 AM



Joshua Dodge Broadwater

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 our 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 is emails like this that make me laugh and wonder.

Amy Presley <apresley@counselorsaltyofrochester.com>
to Joe, Joshua, Amy, Cassandra, Trina

11:19 AM (20 hours ago)

For the record I have only spoken to Cassandra once (I called your cell and she answered) and that was after your surgery. There has been NO communication besides that. Messages have NOT been returned from either of you, to me regarding this issue. No emails, no voicemails, no phone calls. That being said I am not interested in bickering and would like to receive the paperwork regarding this file so I can close it out and close the chapter on you Josh. You have been nothing but a thorn in our side since your affiliation with our company. Please return the attached by this Friday (April 22nd) or we will take steps with the Department of Commerce.

Amy G. Presley

Vice President
587-536-5247

COUNSELOR



Write a comment...



Derek S. Rajavuori
Attorney at Law
dsr@dunlaplaw.com

April 29, 2016

Joshua D. Broadwater
1563 Amco Drive
Chatfield, MN 55923

RE: Counselor Realty of Rochester
Our File No. 16-0923

Dear Mr. Broadwater:

My office represents Counselor Realty of Rochester. It is my understanding that you recently publicized a Facebook post that included an email from Amy Presley, Counselor's Vice President. Your post was misleading and amounts to defamation under Minnesota law.

Specifically, you indicate in your post that you are "still waiting to get [your] full commission check" from Counselor Realty. You fail to mention, however, that the attached email was one of several correspondences regarding paperwork you have refused to provide to Counselor. As part of its business practice, and in order to satisfy the Minnesota Association of Realtors Code of Ethics, Counselor does not pay commission checks until it receives completed paperwork from the sale. Counselor has made several attempts to arrange receipt of this paperwork so that it can pay your commission and terminate your relationship. Your post implies that Counselor has wrongfully and without justification withheld your commission. This is incorrect.

Your misrepresentation has caused substantial harm to my client's reputation. The Facebook post has been "shared" between several members of the community, and at least one person responded to your post and indicated that she "won't be doing business with" Counselor in the future. The post also contains personal information for Amy Presley.

Counselor takes its reputation in the community very seriously. It will invoke the protections of law unless you immediately remove this and all other Facebook posts mentioning Counselor and/or its employees and refrain from making such posts in the future. To be clear, if you refuse to remove these posts, or if you make similar posts in the future, my clients will bring an action for defamation against you. In that action, they will seek both compensatory and punitive damages. If I do not receive confirmation that your post has been removed within 10 days of this letter, my clients will proceed with a defamation action.


Please do not hesitate to contact me if you have questions. I look forward to hearing from you.

Joshua D. Broadwater
April 29, 2016
Page 2

Very truly yours,

Derek S. Rajavuori

Cc: Amy Presley

Comment  Share

6 hours ago · Like · 1 · Reply

Dunlap & Seeger, P.A.
ATTORNEYS AT LAW
POST OFFICE BOX 549
ROCHESTER, MN 55903
TELEPHONE 507/288-9111
EIN 41-1223541

PAID	
Date 6.23.16	CK# 10439

Counselor Realty of Rochester, Inc.
Amy G. Presley
3338 19th Street NW Suite 103
Rochester, MN 55901

June 16, 2016
Invoice # 11744
Client # 510759
Matter # 510759-160923

Re: Broadwater, Joshua

CURRENT BILLING SUMMARY THROUGH June 16, 2016

Fees For Professionals Service:	1,087.50
Expenses Advanced:	4.42
CURRENT BILL DUE	1091.92
Previous Balance Due	0.00
Payments	0.00
Less Retainer Applied	
TOTAL BALANCE DUE	\$1,091.92
Total Retainer Remaining	\$0.00

An annual finance charge of 6% will be charged on unpaid balances in excess of 30 days

Dunlap & Seeger, P.A.

Client # 510759
June 16, 2016
Invoice # 11744
Page 1

RE: Broadwater, Joshua
ADV:
MATTER # 510759-160923

SERVICES RENDERED

Date	Description	
04/28/16	Research re: defamation; draft of cease and desist letter.	
04/29/16	Revision of Cease and Desist Letter; voicemail and email to client; research re: removal of Facebook post; call with client; mail letter to Joshua Broadwater; filing of report with Facebook.	
04/29/16	Calls and emails with client.	
05/04/16	Email to client.	
05/13/16	Communication with client.	
05/17/16	Emails and call with client.	
05/19/16	Emails between Countryside staff and Broadwaters.	
	FEES	\$1,087.50

EXPENSES ADVANCED

Printed Document	0.60
Westlaw Research	3.82
Total Expenses	<u>\$4.42</u>

Total This Matter \$1,091.92

TOTAL THIS STATEMENT \$1,091.92

Dunlap & Seeger, P.A.

ATTORNEYS AT LAW
POST OFFICE BOX 549
ROCHESTER, MN 55903
TELEPHONE 507/288-9111
EIN 41-1223541

Counselor Realty of Rochester, Inc.
Amy G. Presley
3338 19th Street NW Suite 103
Rochester, MN 55901

June 16, 2016
Invoice # 11744
Client # 510759
Matter # 510759-160923

Re: Broadwater, Joshua

REMITTANCE COPY
Return with Payment

CURRENT BILLING SUMMARY THROUGH June 16, 2016

Fees For Professionals Service:	1,087.50
Expenses Advanced:	4.42
CURRENT BILL DUE	1091.92
Previous Balance Due	0.00
Payments	0.00
TOTAL BALANCE DUE	\$1,091.92
Total Retainer Trust Remaining	\$0.00

**IF YOU WISH TO PAY YOUR BILL BY CREDIT CARD,
PLEASE VISIT www.dunlaplaw.com AND CLICK ON THE "ONLINE PAYMENT" LINK
AT THE BOTTOM OF THE SCREEN ON THE HOME PAGE**

Please return this page with your remittance to:

Dunlap & Seeger, P.A.
P.O. Box 549
Rochester, MN 55903