

Doc 2 - Complaint Cover Letter

9/21/2022

RE: Real Estate Brokerage Malfeasance in the California Horse House Trading Industry - Request for Investigations, License Revocations, Fines, Penalties, Incarceration, and Legislative Changes

Dear California Department of Real Estate:

This is the cover letter for a complaint related to a residential real estate transaction in Monterey County CA. The contract was ratified on April 1, 2021 for \$895,000 and the transaction closed escrow May 15, 2021.

The complaint currently has 15 separate claims for fraud and conspiracy to commit fraud, all of which may be downgraded to negligence or dismissed by those of legal mind. Each of the claims are generally separate from the others although some have minor overlap. Most of the individual conspiracies identified involve numerous acts of misrepresentation, deception, omission or fraud under each conspiracy.

Many of the conspiracies involve the Seller, the Seller's Agent and one or more of the following:

1. The Seller's Third Party Transaction Coordinator (recommended by the Seller's Agent)
2. The Seller's pre-sale Home Inspector (recommended by the Seller's Agent)
3. The Seller's pre-sale Termite inspector (recommended by the Seller's Agent)
4. The Seller's Licensed General Contractor (recommended by the Seller's Agent)
5. The Seller's Licensed Painter (recommended by the Seller's Agent)
6. The Seller's unlicensed Deep Cleaning Crew (the Seller's Agent and his wife)
7. The Seller's Broker. (the Person the Seller's Agent represents)

When committing the various frauds, they would have had no idea how bad some of the conditions were they were covering up and ignoring. The total "value" of the frauds after uncovering it all is in the \$150,000 to \$250,000 range depending on interpretation. It could have easily been another \$100,000 to \$200,000 worse. We all got a little lucky in that sense.

Documentation indicates all the Seller's Service providers were suggested to the Seller by the Seller's Agent AND the Seller's Agent managed all the interactions with all the service providers given the Seller had moved out of state approximately 9 months prior to listing the home and formally turned over all aspects of property management and work oversight to the Seller's Agent.

In addition to failing to disclose their property management relationship and their working relationship for repairs, the Seller and Seller's Agent provided disclosure documents that indicated they did NOT participate in this exact type of repair relationship. Documentation also shows a startling alignment among all Seller's Agent's suggested service providers to create a consistent but inaccurate picture of property conditions and grossly inappropriate disclosure documents.

From conversations with the Seller's Agent before dialogue broke down, it seems this "group" of

outwardly unrelated service providers is well known for providing outstanding assistance with easing closings with all other Agents in the Seller's Agent's Office. As a long time, but part time Real Estate Agent, the Seller's Agent indicated he had relied on their suggestions for his suggestions.

The Seller's Broker is the person who had zero document review protocols built into any appropriate parts of the transaction and zero supervision oversight protocols that would have prevented this train wreck. The Seller's Broker or someone working for him is also the person who must have telegraphed legal protection directly or indirectly to the Seller's Agent in a way that emboldened the Seller's Agent to operate in a grossly fraudulent manner in plain view with absolutely no outward concern for consequences.

Other conspiratorial concerns involve our own Transaction Coordinator , our own Agent's Office manager, and their Managing Broker.

1. The handling of patently incomplete seller disclosure documents presented by the Seller was grossly out of line with Brokerage Protocols AND their suggestion to either complete the transaction without completed documents or walk away should be the evidence that reveals the second half of a Brokerage System that is designed around seller centric racketeering.
2. The seller benefit bias is driven by the fact that all commissions for both the Seller's Agent and the Buyer's Agent come from the Seller only. It's been a problem for many decades.
3. The Brokerage System of representation for sellers and buyers is conceptually set up much like legal system representation with one major deviation. You would never enter into a legal battle in a system where you, the Plaintiff, was responsible for paying Attorneys on both sides of the transaction no matter who won. If Brokers were to properly and aggressively enforce Seller Disclosure Requirements prior to the listing in MLS, maybe this single sided system of Brokerage Payouts could work. The problem is that Brokers who aggressively make sure their sellers are honest with their disclosures will not get listings long term, because there will always be others that will promise to look the other way. They will eventually get the Lion's share of the listings every time, while pushing more conscientious Agents and Brokers out of business or across ethical lines that they'd wish they never crossed.

Other conspiratorial concerns are related to the California Association of Realtors (CAR) and their creation of a contract for Monterey County that differs in a material way from most other counties in California. Is CAR really made up of "Realtors" or is it made up of "Brokers"? In fact, what is a "Realtor"? Probably not at all what the public would imagine...

1. The Brokerage System for Real Estate is tricky for many reasons. One of those is related to the single sided source for commissions mentioned prior. Another has to do with simple and basic vocabulary. The best way to "manage" such a system is to require the use of "third party contracts" which establishes an "inanimate system" of complex rules to relieve the Brokers of the harder duties of Brokerage. NOTE: The archaic definition of management is manipulation.
2. The current, mandatory CAR contract for Monterey County does not require the delivery of disclosure documents prior to offer submission and ratification. It allows for the delivery of any and all Disclosure Documents up to 7 days AFTER contract ratification.

- a. Apparently, this change was made in the “more recent past” although nobody seems to know exactly when or by who. Apparently, this rule applies only to Monterey County or to a few Monterey Bay Counties. Apparently it is not statewide.
 - b. Thus, a buyer in a transaction in Monterey County where the Seller and/or Seller’s Agent choose not to provide disclosure documents out of courtesy prior to contract ratification, is actually more like a buyer bidding on an abandoned storage unit in storage wars. The other counties who require disclosure delivery prior to offer submission have a reasonable method for trying to manage Seller Disclosure Fraud, as that puts any and all Seller Disclosure claims in a public domain either directly or via request from another Agent.
 - c. This clause which allows for the delayed delivery of Disclosures is the initial clause in the Monterey County Contract that establishes a playing field ripe for Seller Disclosure Fraud and the repetition of it for any individual property until a “mark” is found. Unfortunately, it’s only the leading clause for Seller Protection and anti-Buyer bias. There are several more.
3. Downstream from this clause in the Monterey County CAR contract one will find:
- a. Obfuscation of the true nature of Seller Disclosure responsibilities in an “As Is” Sale and the true machinations of a Contract that offers no Seller Condition Contingency Kick Out.
 - b. Omission of a clearly defined process for handling the discovery of significant non-disclosed items during the escrow period (both before and after the Sellers Disclosure window closes, if the seller is going to be allowed to disclose after ratification, which is a non-starter to begin with)
 - c. Omission of a clearly defined process for handling clear cases of disclosure fraud that are discovered during an escrow process
 - d. Inclusion of a mandatory indemnification clause (aka a “get out of jail free” clause) which the Buyer must sign to get to the finish line. The clause (superficially?) frees the Seller of all property condition omissions that came to light during the escrow period, no matter when or how they came to light and no matter if clear attempts at fraud were made and uncovered during the escrow process.
 - e. Omission of a clear statement that the non-binding mediation which is required per the CAR contract to retain one’s rights to sue for Attorney Fees must transpire in Confidence.
 - f. Omission of a clear statement that the non-binding mediation which is required per the CAR contract to retain one’s rights to sue for Attorney Fees may/will require Attorneys and Attorney fees as part of the Mediation Process. It is not an equitable mediation process, it is a legal one, and that makes it a far more expensive first hurdle for fraud rectification with absolutely no guarantee of any viable outcome no matter what the facts are without a lot more Attorney fees to follow.

All together, the “first trick pulled” was to get the contract to allow a seller to make an offer without disclosure documents in hand. That singular “out of order step” creates a mountain of downstream legal chaos that destroys the rest of the contract from a Buyer Protection and Seller Management perspective. Any and all attempts at civil litigation with this contract would likely prove to be economically futile due to the nature of the mandatory contract itself, which can and should be deemed as part of a Broker fueled

racketeering system, but that will be for others to decide. Only singular and simple acts of fraud that are extremely grand or those that might result in a full contract rescission can currently be pursued without a guaranteed outcome of economic futility.

Participants

The participants in this transaction are included in another document.

Horse Trading under the guise of Brokerage

In conversing with real estate professionals in the area, these problems we experienced seem to be very well known, albeit ours seems to be on the extreme end. In fact, many long-time agents seem to be leaving the industry in our area now because industry related insincerity problems seem to have gotten far worse since 2008 and again worse after 2015 or so.

As one local Licensed Contractor who also had his real estate license put it, it's awful to be on the buying side in this system in Monterey County. However, if you can make it into the game, you get to benefit from the system on the other side too, if you are so inclined and hell-bent to do so..

Summary

We are seeking penalties, suspensions, and license revocations as deemed appropriate by others. We will support criminal investigations and encourage incarceration for the participants as may be applicable. We are suggesting a full review of all California Real Estate Contract rules by parties far removed from the California Association of Realtors.

We are seeking compensation for damages as deemed appropriate by others. We would expect there to be some multipliers for fraud, conspiracy to commit fraud, or other given the organized manner in which the events seemed to unfold and the mandatory documents required, but that will be up to others to discern.

We do not care if each and every claim for conspiracy or fraud or other is substantiated. If you don't feel one is as strong as the rest, toss it out. There's a smorgasbord to choose from.

Seeking Rectification,



Bryan Canary

Cc:
California Attorney General
California State's Attorney / Monterey District Attorney
NAR
California Association of Realtors
The US Justice Department
FTC

https://oag.ca.gov/consumers/general/real_estate_agencies_agents

<https://www.wsj.com/articles/real-estates-biggest-trade-group-seeks-to-block-justice-department-probe-11631557612>