

April 2019

COMMISSION CHECK IN



The Kansas Real Estate Commission prepared this information to provide an overview of common violations. This is an example only, as different facts in a case may result in a different outcome.

Question

Ms. Rogers owns a single-family home on two acres in Kansas. For the last three years, Ms. Rogers has rented the property to Mr. Kim. Mr. Kim wants to purchase the property and makes a verbal cash offer to Ms. Rogers. Ms. Rogers accepts the offer and wants her friend, Salesperson Joe, to draft the paperwork.

Salesperson Joe, with approval from the supervising broker, agrees to draft the purchase contract. He includes the sale price, closing date, and the inspections to be completed. The contract includes a disclosure that both buyer and seller are unrepresented. No agency agreements were signed between Salesperson Joe's supervising broker and Ms. Rogers or Mr. Kim. No other services were provided. Ms. Rogers paid a nominal fee to Salesperson Joe's supervising broker for assisting in the transaction.

Mr. Kim and Ms. Rogers negotiated a few repairs as a result of the inspections. The transaction closed after the repairs were completed.

Did Salesperson Joe and the supervising broker violate Kansas law?

Answer

Yes. Salesperson Joe violated K.S.A. 58-30,103(a) and Salesperson Joe's supervising broker violated 86-3-31(a)(6). Unless a licensee is acting solely as a seller, buyer, landlord, or tenant in a real estate transaction, Kansas law requires the licensee to act as a transaction broker or an agent.

Neither Ms. Rogers nor Mr. Kim signed an agency agreement with Salesperson Joe's supervising broker and Salesperson Joe was not a principal in the transaction. Therefore, Salesperson Joe and his supervising broker were required to act as transaction brokers. A transaction broker has certain statutory obligations and responsibilities, such as assisting the parties in complying with the terms and conditions of any contract including closing the transaction. A licensee cannot waive their statutory obligations.

K.S.A. 58-30,103(a) Except when acting as a transaction broker or solely as a seller, buyer, landlord or tenant, a broker shall act only as a statutory agent in any real estate transaction. A licensee shall not act as a dual agent or in a dual capacity of agent and undisclosed principal in any transaction.

K.A.R. 86-3-31(a) Failure of a supervising broker or branch broker to properly supervise the activities of an associated or employed salesperson or associate broker shall include the following: (6) failing to timely take action to correct or mitigate a violation of the real estate brokers' and salespersons' license act, the brokerage relationships in real estate transactions act, or any commission regulations by an associated or employed salesperson or associate broker, if the supervising broker or branch broker has actual knowledge of the violation;

For information regarding requirements of seller's agents, buyer's agents, and transaction brokers, see K.S.A. 58-30,106, 58-30,107, and 58-30,113.