

Preliminary Analysis

Section 16.13 appears to govern the issues. It creates two exceptions to the general rule that all dealings with property exclusively listed shall be carried on with the client's rep or broker - **except "where such dealings are initiated by the client."**

I would suggest that initiating has more to do with substance than the question of who called first so if Val's contact was not substantive, it can be argued that JB initiated any substantive contact.

Second, the second paragraph of this section provides an exception to the mandate that no substantive services be provided to prospects who are parties to an exclusive rep agreement- "except with the consent of the prospect's exclusive representative **or at the direction of prospects"**

The facts here, as I understand them, are that JB, the prospect, took charge and directed that his representative Frank not be contacted and further authorized and directed all of Val's actions thereafter..these exceptions mesh in this case... JB was the initiator of dealings despite who made the first call...and it is clear that Val's actions thereafter were at the direction of the prospect and seller - JB. (of course, if there are joint sellers, his fiance might have to consent or ratify JB's actions.

Preliminary Conclusion

Under the facts, as developed so far, Val's actions seem defensible under the Code- of course, it would be better if she had not made the first call, but her friendship with JB may help there... she asked " What do I have to know about the property? I think, and JB took it from there - details of that first contact will need to be understood in detail... best if Val writes that out now..

I am, of course, assuming that Frank has an exclusive sales agreement - without that, the issue may be moot.

Beyond that, it is critical that JB not waffle on his role in all this... if he tells Frank or anyone else or has told them that Val was the moving force here - to placate his realtor... that would create real problems... I don't understand his relationship to the other realtor but his testimony on the issue of who motivated the bypass of that realtor may be critical.

Further Query - If Frank has a buyer did he have any duty to disclose that he had a commission coming from that, in addition to his commission from JB as seller... It would be helpful to make this ethics business a double edged sword..