

Dual agency dispute serves as a warning sign for brokers

Firms hold training but oversight is often spotty

By [Meenal Vamburkar](#) and [Kevin Sun](#) | August 22, 2018 08:00AM



(Credit: iStock)

In spring of 2017, Pamela Goldstein spotted a \$599,000 listing for a Colonial-style four-bedroom home in the Hartsdale section of Greenburgh. She contacted the listing agent, Gino Bello at Houlihan Lawrence, and quickly received a message from Daniel Cezimbra, another agent at Houlihan Lawrence. Cezimbra accompanied her to the house showing and warned Goldstein of a bidding war. He encouraged her to submit a \$635,000 bid.

She would later raise the offer to \$637,000, allegedly at Cezimbra's urging, and close on the house in May despite an inspection that revealed problems. But what transpired leading up to that May closing has [directed a spotlight on a process known as dual agency](#), in which a brokerage represents both sides of the deal.

Goldstein discovered that Cezimbra was part of Bello's real estate team, meaning the seller's agent was her agent's boss. Cezimbra also happened to be Bello's brother-in-law and co-listed the home she bought.



In a class-action seeking lawsuit filed in New York Supreme court in July, Goldstein argued that Houlihan was not representing her best interests in the transaction, and the dual agency disclosure forms Houlihan submitted were not properly filled out. She claimed Houlihan, which was [bought by Warren Buffett's Berkshire Hathaway last year for an undisclosed sum](#), provides less disclosure than its peers about its agents' dual roles, baked dual agency into its basic business strategy, and represented both sides of the deal in nine out of 10 of its biggest Westchester sales of 2017. The lawsuit, in which she's the lead plaintiff, seeks the return of hundreds of commissions dating back to 2011 from Houlihan representing both sides of the deal. She called Houlihan's practices "predatory."

Cezimbra has said Goldstein was "well represented" and said that every disclosure was "laid out to her." Houlihan Lawrence, with 1,300-plus agents and [over \\$3.6 billion in sales in Westchester County in 2016](#), also said it was "confident in its business practices."

The practice of dual agency isn't uncommon — especially in markets where a few firms dominate. But improper disclosures and lack of transparency can quickly turn a tricky situation into an unethical, or illegal, one, brokers said. The Houlihan Lawrence case, and others highlight the importance of training, the dangers of being too lax and the challenges of oversight.

"It is a subject matter that has to be clarified very, very clearly," said Compass' Leonard Steinberg. But "it's easily guided by what's in the best interest of the consumer."

In New York, [dual agency is legal](#). It can occur when brokers employed by the same firm represent the buyer and the seller in a deal. It can also happen when a seller's broker finds a buyer or tenant for a property and represents both parties.

Regardless of how the Houlihan case pans out, it's a reminder to the industry to ensure they engage in dual agency in the proper ways, said Neil Garfinkel, broker counsel to the Real Estate Board of New York. Across the top of the New York Department of State's memo on the issue, bold letters read: "BE WARY OF DUAL AGENCY." The guidance emphasizes that it's the broker's responsibility to ensure the client understands they're "giving up their right to the agent's undivided loyalty."

That means broker and firm need to be educated on how to handle the situation, said Elizabeth Ann

Stribling-Kivlan, [president of Stribling & Associates](#). Especially because the paperwork can be hard to decipher, agents shouldn't assume consumers know what they're getting themselves into — even if it's an uncomfortable conversation.

“If you're negotiating deals, you should be able to have a conversation about different things,” she said.

Another prominent case involving a dual agency dispute took place in California. In 2016, the *Horiike v. Coldwell Banker* case went up to the state's Supreme Court — which ruled that a real estate brokerage representing both the buyer and seller in a deal owes the same fiduciary responsibilities to each party. The case centered on Chinese millionaire Hiroshi Horiike's \$12.25 million purchase of a Malibu property. California's Second District Court of Appeals [ruled that Coldwell Banker was operating as a dual agent](#) and owed a fiduciary responsibility to Horiike through both of its agents. The firm appealed the decision, but the Supreme Court affirmed it.

Separately, in New York, Douglas Elliman's [Roger Erickson was issued a \\$2,000 fine](#) and ordered to complete 10 hours of ethics training for allegedly having secretly worked as a dual agent on a 2009 deal.

Stribling-Kivlan said she frequently fields questions about dual agency at her firm, and it's included in agent training. Garfinkel also does training at REBNY, including “lunch and learn” meetings in his office. In addition to answering agent inquiries, tactics have included role-playing exercises and a video series. Firms should have a policy and procedure in place for explaining dual agency and not being able to offer the “full realm of undivided loyalty,” Garfinkel said.

For Pamela D'Arc, a broker at Stribling, it's a familiar experience. If a direct client approaches her about a listing, she said she is quick to explain she represents the seller — and walk them through the disclosure before signing anything.

“Sometimes people take for granted that the layman understands the process,” D'Arc said. “What's second nature to the broker is not second nature to a buyer.”

Inevitably, as in any industry, there are bad actors or simply negligent ones. The trouble is that policing the operations of a company full of independent contractors isn't easy, said Donna Olshan, [head of Olshan Realty](#). “They call their own shots, do their own thing,” she said. “Day to day, oversight can be lax.”

But the consequences of getting caught can be significant. In California, during this decade, at least 16 agents have been disciplined — including licenses being suspended, restricted or revoked — due to violations involving dual agency, according to the state's Department of Real Estate.

There can also be monetary penalties. Illinois has had around 14 instances of enforcement involving this issue since 2010. In February 2015, for example, one agent was placed on “indefinite probation for a minimum of two years for failing to obtain a written listing agreement and a written dual agency

agreement in a real estate transaction,” according to the state’s Department of Financial and Professional Regulation.

Another agent in the state was placed on probation for two years and fined \$4,000. Yet another was indefinitely suspended and fined \$25,000 for” failure to disclose license status to client and for improperly acting as a dual agent in a transaction in which he was the buyer.”

Though it may be difficult to monitor agents, firms still need to encourage agents to “over-communicate” — and give more than just a slap on the wrist when they find wrongdoing, Steinberg said.

“It’s the industry’s role to self-regulate,” he said. “So we don’t have to have outside people sue the industry.”

Tags: [houlihan lawrence](#), [Residential Real Estate](#)

