**Arbitrable or Not Arbitrable? Mandatory or Voluntary?**

**Directions:** Review the following scenarios. Work with your tablemates to determine if the arbitration request is arbitrable and, if so:

1. is it a type of dispute that can be arbitrated consistent with Article 17 and *Code of Ethics and Arbitration Manual,* and
2. should the request be classified as mandatory or voluntary.
3. REALTOR® principal Corrie of ABC Realty and REALTOR® principal Theo of XYZ Realty are next door neighbors on lake front property. As friends for over 10 years, they agree to split the cost of a $10,000 pier and share the use of the pier with Corrie’s water “toys” docked/stored on the left of the pier and Theo’s water “toys” docked/stored on the right side of the pier. Theo purchases the pier. Corrie’s life circumstances change a week after the purchase of the pier. She is forced to sell her home, and she does not pay Theo $5,000. Corrie remains the REALTOR® principal at ABC Realty. When it becomes clear to Theo that Corrie will not pay him pursuant to their written agreement, Theo files for arbitration against Corrie and ABC Realty, requesting $5,000.

❒ Arbitrable **X** Non-Arbitrable ❒ Mandatory ❒ Voluntary

**Debrief:** The dispute is not arbitrable as there was no contract with respect to the $5,000 between the REALTORS® that arises out of their relationship as REALTORS®. Although both Theo and Corrie are REALTOR® principals affiliated with different real estate firms, the dispute arises out of their relationship as **neighbors** and relates to personal property. Neither Corrie nor her firm can be required to arbitrate. Article 17 provides in pertinent part:

*In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.*

1. REALTOR® non-principal Sarah, a licensee at company A, has an excellent relationship with a buyer that she represents as an exclusive buyer broker. Prior to leaving company A, she and her broker, Bill, agree that he will release the buyer from the buyer broker agreement when Sarah leaves company A the following week, and that should that buyer purchase a property with Sarah’s assistance during the next year after Sarah affiliates with another company, that Sarah will pay Bill $3,000. After Sarah leaves company A and affiliates with another company, the buyer purchases a property through Sarah within three months. Sarah does not pay Bill at the time of the closing, and does not pay Bill when Bill reminds her of their agreement after learning of the sale. Bill files an arbitration request against Sarah’s current broker who was paid the cooperating broker’s portion of the commission on the sale, requesting to be paid the $3,000.

❒ Arbitrable **X** Non-Arbitrable ❒ Mandatory ❒ Voluntary

**Debrief:** There is no arbitrable dispute between Bill and Sarah’s new broker because Sarah’s new broker never offered to pay Bill any monies relating to this dispute.

The facilitator should ask the attendees if Bill could file for arbitration against Sarah and, if so, whether the request would be classified as mandatory or voluntary.

An arbitration request filed by Bill directly against Sarah would be arbitrable regardless of whether the agreement between Sarah and Bill was written or oral. Article 17 only requires that a contractual dispute (or specific non-contractual disputes as defined in Standard of Practice 17-4) be at issue, but it does not require that agreement to be in writing.

An arbitration request filed by Bill against Sarah would be classified as a voluntary arbitration consistent with Section 44 (a) (3). The agreement giving rise to the dispute stems from a time when Sarah was affiliated with Bill. Section 44 (a) (3) provides:

*REALTORS® and REALTOR® ASSOCIATE®s who are or were affiliated with the same firm shall have the same right to invoke the arbitration facilities of the Board, provided each party voluntarily agrees to the arbitration in writing and the Board finds the matter properly subject to arbitration in accordance with the provisions of* ***Part Ten****, Section 45 of this Manual. This privilege as stated applies to disputes arising when the parties are or were affiliated with the same firm, irrespective of the time request is made for such arbitration.*

1. Listing agent, REALTOR® principal Amy, and selling agent, REALTOR® principal Bonnie, were in a successful cooperative transaction on REALTOR® Amy’s listing at 456 Jones Street. Amy is an MLS participant only in MLS A and is affiliated with firm A. Bonnie is an MLS participant only in MLS B and is affiliated with firm B. REALTOR® Bonnie contacted REALTOR® Amy when she saw the property advertised on social media, knowing she had a buyer for the property. Subsequent to closing, REALTOR® Amy declined to pay Bonnie. Bonnie filed an arbitration request against Amy at Amy’s local association, requesting the cooperating broker’s portion of the commission that Amy offered through MLS.

❒ Arbitrable **X** Non-Arbitrable ❒ Mandatory ❒ Voluntary

**Debrief:** Not arbitrable because there is no contractual agreement, or specific non-contractual agreement consisted with SOP 17-4, between REALTOR® Amy and REALTOR® Bonnie. The broker principals are affiliated with different MLS, and the facts do not indicate there was an offer of cooperative compensation made by Amy to Bonnie outside the MLS. Amy **is** obligated to cooperate with other brokers in her client’s best interests, but Article 3 is clear that the obligation to cooperate **does not** mandate that the cooperating broker be compensated by the listing broker. Unless Amy offered to compensate Bonnie outside the MLS, Amy cannot be required to arbitrate.

1. REALTOR® principal Joyce inherited a property approximately 500 miles from her home and her firm, Joyce Realty. After visiting the inherited property on a family vacation, she decided to sell it, listing it with REALTOR® principal Paul of Paul Realty because he was a participant in the MLS where the inherited property was located. Joyce did not participate in that MLS. Paul did not participate in the MLS that Joyce participated in. At closing, Joyce instructed the closing officer to disburse to Paul only half of the commission called for in the listing contract. Joyce stated that because the offer that was ultimately successful was from a member of Paul’s family and that it was an “in-house” sale, it was only fair for Paul to reduce his commission. Paul disagreed and filed an arbitration request directly at the board where REALTOR® principal Joyce was a member and MLS participant, requesting to be paid the balance of his commission as the listing broker.

**X** Arbitrable ❒ Non-Arbitrable ❒ Mandatory **X** Voluntary

**Debrief:** This is arbitrable but voluntary. The relationship between Joyce and Paul was one of client/seller and listing broker. Joyce had not acted within the scope of her real estate license, but instead was acting solely as a seller. There had been no “relationship as REALTORS®” between her and Paul as reference in Article 17 of the Code, in pertinent part:

*In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationships as REALTORS®, the REALTORS® shall mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.*

Standard of Practice 17-3 provides:

*REALTORS®, when acting solely as principals in a real estate transaction, are not obligated to arbitrate disputes with other REALTORS® absent a specific written agreement to the contrary.*

Although the matter could be mediated or arbitrated, at Joyce’s discretion, Joyce cannot be compelled to mediate or arbitrate consistent with the second paragraph of Article 17 and Section 44 (a) (2), Duty and Privilege to Arbitrate, *Code of Ethics and Arbitration Manual*.

**Article 17 provides in pertinent part**:

*In the event that clients of REALTORS® wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall mediate or arbitrate those dispute in accordance with the policies of the Board, provided the clients agree to be bound by any resulting agreement or award.*

**Section 44 (a) (2) provides:**

*A client of a REALTOR® principal may invoke the arbitration facilities of the Board in a business dispute with a REALTOR® principal or the REALTOR®‘s firm (or both) arising out of an agency relationship or legally recognized non-agency relationship, provided the client agrees to be bound by the arbitration. In the event of such a request and agreement, the Board will arbitrate the dispute subject to the provisions of Part Ten, Section 45. A REALTOR® principal may also invoke arbitration against his client but no arbitration may be held without the client’s voluntary agreement to arbitrate and to be bound by the decision.*

Note: See Case Interpretations 17-12, Arbitration when a REALTOR® Acts Exclusively as a Principal in a Transaction, and Case Interpretation 17-13, Arbitration Involving a REALTOR® Selling her Own Property, are resources and are available on-line at nar.realtor.

1. REALTOR® principal Trish believes she is entitled to the selling portion of the commission given the offer of compensation to potential cooperating brokers made via the MLS in which she participates. She does not notify the listing broker, REALTOR® Tom, or selling agent, REALTOR® principal Charlie who was paid the cooperative compensation, of her claim prior to or subsequent to the property closing. She does not want to invoke arbitration or mediation at the board so Trish waits 180 days to file litigation against REALTOR® Tom, the listing broker. Upon receipt of the notice of litigation, but well beyond 180 days after closing, REALTOR® Tom files an arbitration request against both REALTOR® Charlie who was paid the cooperative compensation and REALTOR® Trish.

Tom versus Charlie

**X** Arbitrable ❒ Non-Arbitrable **X** Mandatory ❒ Voluntary

Tom versus Trish

**X** Arbitrable ❒ Non-Arbitrable **X** Mandatory ❒ Voluntary

**Debrief:** The arbitration request as filed is arbitrable and mandatory against both Charlie and Trish. See Appendix I to Part Ten, Arbitrable Issues, which provides in pertinent part:

*Still another common question is whether a REALTOR® (often a cooperating broker with an arguably-arbitrable claim) can thwart the process by remaining silent for one hundred eighty (180) days and then bringing a lawsuit against another REALTOR® (often the listing broker). As noted previously, arbitration requests must be filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later. REALTORS® cannot reasonably be expected to request arbitration in circumstances where they have no reason to know that a dispute with another broker or firm even exists. Under these circumstances, a listing broker with no prior knowledge of a dispute would have one hundred eighty (180) days from receipt of notice of a lawsuit to invoke arbitration with the other broker*.

Additionally, Appendix I to Part Ten, Arbitration Guidelines, provides in pertinent part:

*To conduct arbitration hearings, Boards of Realtors®, acting through their Grievance Committees and Professional Standards Committees, must have a clear understanding of what constitutes an arbitrable issue. An arbitrable issue includes a contractual question arising out of a transaction between parties to a contract in addition to certain specified non-contractual issues set forth in Standard of Practice 17-4. Many arbitrations conducted by Boards of Realtors® involve entitlement to compensation offered by listing brokers through a multiple listing service or otherwise to cooperating brokers acting as subagents, as agents of purchasers, or in some other recognized agency or non-agency capacity. Frequently, at closing, the listing broker will be paid out of the proceeds of the sale and will direct that a disbursement be made to the cooperating broker who the listing broker believes was the procuring cause of the sale. Subsequently, another broker who may have been previously involved in the transaction will file an arbitration request claiming to have been the procuring cause of sale, and the question arises as to who is the proper respondent.*

*In our example, assume that the listing broker is Broker A, the cooperating broker who was paid is Broker B, and the cooperating broker who was not paid, but who claims to be the procuring cause of sale, is Broker C. It is not unusual for arbitration requests filed by one cooperating broker to name another cooperating broker as the respondent. This is based on the assumption that the monies the listing broker paid to Broker B are unique and that the listing broker’s obligation to compensate any other broker is extinguished by the payment to Broker B, irrespective of whether Broker B was the procuring cause of sale or not. However, the mere fact that the listing broker paid Broker B in error does not diminish or extinguish the listing broker’s obligation to compensate Broker C if a Hearing Panel determines that Broker C was, in fact, the procuring cause of sale.*

*Does this mean that a listing broker is always potentially obligated to pay multiple commissions if a property was shown by more than one cooperating broker? Not necessarily. When faced with Broker C’s arbitration request, the listing broker could have initiated arbitration against Broker B, requesting that the Hearing Panel consider and resolve all of the competing claims arising from the transaction at the same time. Professional Standards Policy Statement 27, Consolidation of arbitration claims arising out of the same transaction, provides:*

When reviewing requests for arbitration, Grievance Committees should try to ensure that all appropriate parties are named as complainants or respondents. If it appears that there may be related claims involving other parties arising out of the same facts, the Grievance Committee may suggest to either the complainant or respondent (or both) that they may wish to request arbitration with additional respondents or third-party respondents so that all related claims may be resolved through a single arbitration hearing. Upon motion by either the complainant or the respondent, an arbitration request may be amended to include any additional appropriate parties, or separate arbitration requests may be filed naming additional parties, so that all related claims arising out of the same transaction can be resolved at the same time.

1. REALTOR® principal Martha is a member of board A and is an MLS participant in both board A’s MLS and in board B’s MLS. Martha is not a member in board B. REALTOR® principal Kathy is only a member of board B and only participates in board B’s MLS. Martha enters an offer of cooperative compensation into both board A’s MLS and board B’s MLS for property located at 123 Main Street. A non-principal affiliated with Kathy is ultimately successful in submitting an offer on behalf of a buyer client for 123 Main Street. REALTOR® principal Martha declines to pay REALTOR® Kathy the cooperative compensation offered in board B’s MLS. REALTOR® Kathy files for arbitration against REALTOR® Martha at board B for the amount of compensation offered in board B’s MLS.

**X** Arbitrable ❒ Non-Arbitrable **X** Mandatory ❒ Voluntary

**Debrief:** Arbitrable and mandatory. Even though Martha isn’t a member of Board B, Board B retains jurisdiction over Martha given she is an MLS participant in board B’s MLS. Kathy would not have to file the arbitration request at board A where Martha is a REALTOR®. Kathy has the ability to choose where she will file her arbitration request, either at Board A or Board B.

Section 14 (h), Nature of Discipline, provides in pertinent part that:

 *REALTORS® who participant in MLS or otherwise access MLS information through any Board or Association in which they do not hold membership are subject to the Code of Ethics in that Board or Association on the same terms and conditions as Board members.*

Furthermore, Section 44 (a), Duty and Privilege to Arbitrate, provides in pertinent part:

 *…REALTOR® principals who participate in a Board’s MLS where they do not hold Board membership, or nonmember brokers and nonmember licensed or certified appraisers who participate in the Board’s MLS, having signed the agreement to abide by the Board’s Multiple Listing Service rules and regulations binds himself or herself and agrees to submit to arbitration by the Board’s facilities…*

1. REALTOR® principal Matthew is primarily a commercial broker, but some of the non-principals affiliated with him also do residential sales, so Matthew is a member of board A and participates in board A’s residential MLS. Broker principal Andrew (a non-member commercial broker) is not an MLS participant in Board A’s MLS, but an offer of compensation is made by Matthew to Andrew outside the MLS. Specifically, Matthew orally offers to pay Andrew the equivalent of the first month’s rent if Andrew finds a tenant that executes a lease for the commercial space that Matthew manages at 24 Academy Way. Andrew finds a tenant that executes a lease and moves her business into 24 Academy Way. Matthew declines to remit to Andrew the equivalent of the first month’s rent. Andrew files for arbitration at board A, requesting that Matthew be required to remit the monies as promised.

**X** Arbitrable ❒ Non-Arbitrable ❒ Mandatory **X** Voluntary

**Debrief:** Arbitrable but voluntary. Pursuant to Article 17, contracts relative to cooperative compensation do not have to be in writing. However, Andrew as a non-member and not an MLS participant in the board’s MLS, so he has no ability to invoke mandatory arbitration. Section 44 (a) (4), Duty and Privilege to Arbitrate, provides in pertinent part:

*A nonmember broker who is not an MLS Participant or nonmember salesperson may invoke the arbitration facilities of the Board of REALTORS® in cases where they believe they have an arbitrable dispute with a REALTOR®. Under these circumstances, REALTORS® are not required to agree to or participate in arbitration.*

1. REALTOR® Rob with Rob Realty participates in MLS A, as does REALTOR® Tommy of Tommy Realty and REALTOR® Adam of Adam Realty. Rob offers cooperative compensation via the MLS on his listing located at 4545 Flowers Street. REALTOR® Tommy’s licensee submits an offer on behalf of a buyer client, Joe, which is accepted. The property closes and REALTOR® Rob pays REALTOR® Tommy the cooperating broker’s portion of the commission. REALTOR® Adam becomes aware that his buyer client, Joe, purchased 4545 Flowers Street through REALTOR® Tommy. REALTOR® Adam files an arbitration request directly against REALTOR® Tommy for the amount of money that Rob paid Tommy, arguing that his licensee procured the purchaser.

**X** Arbitrable ❒ Non-Arbitrable **X** Mandatory ❒ Voluntary

**Debrief:** This is arbitrable and mandatory. This is a specific non-contractual dispute as outlined by SOP 17-4 (1).

SOP 17-4 (1) provides:

*Where a listing broker has compensated a cooperating broker and another cooperating broker subsequently claims to be the procuring cause of the sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction.*

1. REALTOR® principal Charlie of ABC Realty and REALTOR® principal Ted of XYZ Realty each had an exclusive listing agreement with seller Conrad relating to the same property at different times. Conrad paid REALTOR® Charlie the listing broker’s portion of the commission when his property closed while listed with REALTOR® Charlie. REALTOR® Ted believes that he should have been paid the listing broker’s commission, and he files an arbitration request against REALTOR® Charlie.

❒ Arbitrable **X** Non-Arbitrable ❒ Mandatory ❒ Voluntary

**Debrief:** Not arbitrable as there was no contract with respect to the listing broker’s portion of the commission between the two brokers. If Conrad agreed to arbitrate the listing broker’s portion of the commission in an open listing situation, an arbitration could go forward pursuant to SOP 17-4 (4). In this example, however, SOP 17-4 (4) is not applicable because the property was exclusively listed. SOP 17-4 (4) provides:

*Where two or more listing brokers claim entitlement to compensation pursuant to open listings with a seller or landlord who agrees to participate in arbitration (or who requests arbitration) and who agrees to be bound by the decision. In cases where one of the listing brokers has been compensated by the seller or landlord, the other listing broker, as complainant, may name the first listing broker as respondent and arbitration may proceed between the brokers.*

1. Selling agent REALTOR® principal Tammy rejected the offer of compensation offered in the MLS by REALTOR® principal Joseph on his listing at 646 Staysail Drive. REALTOR® Tammy’s buyer client has agreed to compensate Tammy directly. As a result, REALTOR® Joseph agrees to reduce the commission owed by the seller and the transaction closes. Two hundred days after closing, REALTOR® principal Jamie, also an MLS participant in the same MLS, files an arbitration request against REALTOR® Joseph, claiming to be procuring cause of the sale. REALTOR® Jamie did not know the buyers had purchased the property until the tax records were updated two months ago. Upon receiving the arbitration request, REALTOR® Joseph named REALTOR® Tammy as a third-party respondent.

REALTOR® Jamie vs. REALTOR® Joseph’s dispute:

**X** Arbitrable ❒ Non-Arbitrable **X** Mandatory ❒ Voluntary

REALTOR® Joseph vs. REALTOR® Tammy’s dispute:

**X** Arbitrable ❒ Non-Arbitrable **X** Mandatory ❒ Voluntary

**Debrief:** In both instances, the arbitration requests would be arbitrable and mandatory pursuant to SOP 17-4 (3) which provides:

*Where a buyer or tenant representative is compensated by the buyer or tenant and, as a result, the listing broker reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. (Adopted 1/97)*

1. Listing agent, REALTOR® principal Arlene, and selling agent, REALTOR® principal Susan, were in a cooperative transaction on REALTOR® Arlene’s listing at 362 Marine Street with buyer Shirley. However, buyer Shirley was unable to obtain financing so that transaction fell apart. REALTOR® Arlene’s listing expired. REALTOR® Susan then listed the property. Subsequently, buyer Shirley inherited money and submitted a new offer to REALTOR® Susan, now able to qualify for a loan. That transaction closed. REALTOR® Arlene believes she is entitled to the listing broker’s portion of the commission from REALTOR® Susan.

❒ Arbitrable **X** Non-Arbitrable ❒ Mandatory ❒ Voluntary

**Debrief:** Not arbitrable because there is no contractual agreement, or specific non-contractual agreement consistent with SOP 17-4, between REALTOR® Arlene and REALTOR® Susan concerning the listing broker’s portion of the commission.

1. Buyer client Keegan enters into an exclusive representation agreement with REALTOR® non-principal, Kevin. REALTOR® Kevin introduced Keegan to an unrepresented seller’s property at 600 Southwinds Drive. Keegan went directly to the seller and negotiated a contract. REALTOR® Kevin’s principal broker put client Keegan on notice that he expected him to compensate their firm in accordance with the exclusive buyer representation agreement. Keegan disagreed that REALTOR® Kevin was entitled to compensation and hired an attorney. The attorney told him he could resolve the issue by filing an arbitration request at the board. Buyer Keegan files an arbitration request against REALTOR® Kevin.

❒ Arbitrable **X** Non-Arbitrable ❒ Mandatory ❒ Voluntary

**Debrief:** Not arbitrable because a non-principal cannot be the party to an arbitration request. However, if Keegan files an arbitration request against REALTOR® Kevin’s principal broker, then Article 17 requires REALTOR® Kevin to arbitrate with the client. Article 17 provides, in pertinent part:

*In the event that clients of REALTORS® wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall mediate or arbitrate those dispute in accordance with the Policies of the Board, provided the clients agree to be bound by any resulting agreement or award.*

1. Non-member broker principal Alex is not an MLS participant but an offer of compensation is made to him by the listing broker outside the MLS on property located at 78 Fairway Drive. Alex believes he is the procuring cause of a sale for that property when it closes. He files a request for arbitration against REALTOR® principal Ariana who was the selling agent of 78 Fairway Drive and who was paid the cooperating broker’s portion of the commission by the listing broker.

 **X** ❒ Arbitrable ❒ Non-Arbitrable ❒ Mandatory **X** Voluntary

**Debrief:** This is a specific non-contractual dispute as outlined by SOP 17-4 (1) as filed by the nonmember against the cooperating broker who was paid. It would be a contractual dispute given the offer made by the listing broker to the nonmember outside the MLS. However, in either instance, the arbitration request would be voluntary on behalf of the listing broker and the cooperating broker because Section 44 (a) (4), Duty and Privilege to Arbitrate, provides:

*A REALTOR® principal may invoke the arbitration facilities of his Board with a nonmember broker, provided each party agrees in writing to the arbitration and provided the Board finds the matter properly subject to arbitration in accordance with the provisions of* ***Part Ten****, Section 45 of this Manual. However, it shall be optional with the member as to whether he will submit to a claim to arbitration with a nonmember broker who is not an MLS Participant. A nonmember broker who is not an MLS Participant or nonmember salesperson may invoke the arbitration facilities of the Board of REALTORS® in cases where they believe they have an arbitrable dispute with a REALTOR®. Under these circumstances, REALTORS® are not required to agree to or participate in arbitration.*

SOP 17-4 (1) provides:

*Where a listing broker has compensated a cooperating broker and another cooperating broker subsequently claims to be the procuring cause of the sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction.*

1. REALTOR® principal Connie believes she is entitled to the selling portion of the commission at 500 Mountainside Drive given the offer of compensation to potential cooperating brokers made via the MLS in which she is an MLS participant. She does not notify the listing broker, REALTOR® Sam, or selling agent, REALTOR® principal Tony, of this claim prior to or subsequent to the property closing. She does not want to invoke arbitration at the board so waits 180 days to file litigation against REALTOR® Tony who was paid the cooperating broker’s portion of the commission subsequent to closing. Upon receipt of the notice of litigation, REALTOR® Tony files a request for arbitration against REALTOR® Connie.

**X** Arbitrable ❒ Non-Arbitrable **X** Mandatory ❒ Voluntary

**Debrief:** Arbitrable given SOP 17-4 (1), and the grievance committee would classify this request as being mandatory. See Appendix I to Part Ten, Arbitrable Issues, which provides in pertinent part:

*Still another common question is whether a REALTOR® (often a cooperating broker with an arguably-arbitrable claim) can thwart the process by remaining silent for one hundred eighty (180) days and then bringing a lawsuit against another REALTOR® (often the listing broker). As noted previously, arbitration requests must be filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later. REALTORS® cannot reasonably be expected to request arbitration in circumstances where they have no reason to know that a dispute with another broker or firm even exists. Under these circumstances, a listing broker with no prior knowledge of a dispute would have one hundred eighty (180) days from receipt of notice of a lawsuit to invoke arbitration with the other broker*.

1. REALTOR® nonprincipal Ericka has a disagreement with her broker principal, Tom, relating to the cooperative compensation she is entitled to pursuant to her independent contractor’s agreement with Tom. She is unsuccessful in working out the disagreement with Tom. Ericka ultimately affiliates with REALTOR® principal Luke at a different brokerage company who is appalled at how Ericka was treated by her former broker. Luke files for arbitration against Tom, requesting compensation on Ericka’s behalf.

❒ Arbitrable **X** Non-Arbitrable ❒ Mandatory ❒ Voluntary

**Debrief:** Not arbitrable because there is no contractual agreement or specific non-contractual agreement between Tom and Luke relating to Ericka’s independent contractor agreement. Although Ericka could invoke arbitration against her former broker either while affiliated with her former broker or even when affiliated with her new broker, that arbitration request would be classified as voluntary by the grievance committee pursuant to Section 44 (a) (3), Duty and Privilege to Arbitrate, which provides:

*REALTORS® and REALTOR ASSOCIATE®s who are or were affiliated with the same firm shall have the same right to invoke the arbitration facilities of the Board, provided each party voluntarily agrees to the arbitration in writing and the Board finds the matter properly subject to arbitration in accordance with the provisions of* ***Part Ten****, Section 45 of this Manual. This privilege as stated applies to disputes arising when the parties are or were affiliated with the same firm, irrespective of the time request is made for such arbitration.*

1. REALTOR® principal Sam lives in Florida and is affiliated with Sam Realty, Inc. REALTOR® principal Oscar lives in New York and is affiliated with Oscar Realty, LLC. Sam is visiting family in New York and through mutual friends meets Oscar at a summer wedding. Oscar and Sam strike up a conversation at the wedding and their conversation quickly turns to the real estate business. Oscar verbally offers Sam a referral fee relating to a high-end property he is having difficulty selling. Sam refers a buyer to Oscar who ultimately purchases the high-end property. Shortly after closing, the buyer called Sam and thanks Sam for referring her to Oscar. She loves her summer home in NY. Oscar then calls Sam who relays that he cannot pay Oscar any monies for referring the buyer because of financial difficulties. Sam files for arbitration at Oscar’s board, requesting the referral fee.

**X** Arbitrable ❒ Non-Arbitrable **X** Mandatory ❒ Voluntary

**Debrief:** Arbitrable and mandatory. Pursuant to Article 17, contracts relative to cooperative compensation do not have to be in writing. This is a contractual dispute between two REALTOR® principals arising out of their relationship as REALTORS®, and as such would be referred on a mandatory basis pursuant to Section 44 (a) (1) which provides in pertinent part:

*Every REALTOR® of the Board who is a REALTOR® principal, every REALTOR® principal who participates in a Board’s MLS where they do not hold Board membership and every nonmember broker or licensed or certified appraiser who is a Participant in the Board’s MLS shall have the right to invoke the Board’s arbitration facilities in any dispute arising out of the real estate business with a REALTOR® principal in another real estate firm or with that firm (or both), or nonmember broker/appraiser or their firm (or both) who is a Participant in the Board’s MLS…*

Sam can mandate arbitration per Standard of Practice 17-5 which provides:

*The obligation to arbitrate established in Article 17 includes disputes between REALTORS® (principals) in different states in instances where, absent an established inter-association arbitration agreement, the PREALTOR (principal) requesting arbitration agrees to submit to the jurisdiction of, travel to, participate in, and be bound by the resulting award rendered in arbitration conducted by the respondent(s) REALTOR®*’s association, in instances where the respondent(s) REALTOR®’s association determines that an arbitrable issue exists.

1. REALTOR® principal Mary is a member of board A and is an MLS participant in both board A’s MLS and in board B’s MLS. Mary is not a member at board B. REALTOR® principal Kris is only a member of board B and only participates in board B’s MLS. Mary enters an offer of cooperative compensation into board A’s MLS for property located at 123 Main Street. This property is not listed in board B’s MLS. A non-principal affiliated with Kris is ultimately successful in submitting an offer on behalf of a buyer client for 123 Main Street. REALTOR® principal Mary declines to pay REALTOR® Kris the cooperative compensation offered in board A’s MLS. REALTOR® Kris files for arbitration at board B for the amount of compensation offered in board A’s MLS.

❒ Arbitrable **X** Non-Arbitrable ❒ Mandatory ❒ Voluntary

**Debrief:** Although board B does retain jurisdiction over Mary given she is an MLS participant in board B (Kris would not have to file the arbitration request at board A where Mary is a REALTOR®), the grievance committee will dismiss the arbitration because it is not arbitrable. The facts as presented make no mention of an offer of cooperative compensation being made by Mary to Kris or Kris’ licensee.

1. REALTOR® Sky and REALTOR® Forrest are partners in a building company and members of the same board. After many successful years, they decide to terminate their partnership, REALTOR® Sky deciding to continue to run the company and REALTOR® Forrest deciding to open a competing company. As part of their termination agreement, REALTOR® Forrest agrees not to build new homes in the board’s jurisdiction for a period of 12 months. Four months later, REALTOR® Sky files an arbitration request against REALTOR® Forrest, outlining their termination agreement and the fact that REALTOR® Forrest continues to build homes in violation of that agreement.

❒ Arbitrable **X** Non-Arbitrable ❒ Mandatory ❒ Voluntary

**Debrief:** Not arbitrable. Questions related to a provision of a partnership termination agreement would appropriately be determined by a court. The board’s authority does not extend to ordering performance of contracts.