

ANYONE STILL CARE ABOUT BROKERAGE COMMISSIONS?



COUNSEL'S CORNER

Michael Neary and St. John's Holdings, Inc. brought a lawsuit to collect brokerage fees in connection with the sale of eight apartment complexes to Comunidad Corporation. The Contract did not contain a provision regarding brokerage fees. Neary was a licensed real estate broker. SJH was wholly owned by Neary. SJH had assigned his commissions to SJH, but SJH did not hold a corporate brokerage license issued by TREC.

Neary and SJH claimed that a "Term Sheet" plus several email messages constituted a contract. And that the Sellers breached that contract. And as a consequence, that Neary and SJH were entitled to collect brokerage fees.

The Term Sheet was signed. However, immediately above the signature lines is the sentence: "*This term sheet is a guideline only, and is not binding [emphasis added].*" Various emails did not definitively state the brokerage fee either, as the fee was evidently the subject of hot negotiation.

Doubtless it gave Neary and SJH little comfort when the Dallas Appellate Court wrote that ". . . strict compliance with the [Texas Real Estate License Act] is required; the agreement to pay a real estate commission must be in writing or it is not enforceable." The Appellate Court then defined the term "not binding" to roughly mean, yes you guessed it correctly, "not binding."

The Appellate Court determined, much like the trial court, that the Term Sheet and emails represent at most an effort to negotiate an agreement regarding brokerage fees and other matters. As such those documents do not constitute a signed, written memorandum as contemplated by the TRELA.

Owners win. Brokers lose. See Neary and St. John's Holdings, Inc. v. Mikob Properties, Inc.; 05-09-01175-CV (5th Texas Court of Appeals, Dallas, opinion filed May 9, 2011).

Lessons learned:

1. Texas real estate commission agreements must be in writing.
2. Texas real estate commission agreements must be signed.
3. Texas real estate commission agreements must be in writing and signed.

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