

**NO CONTRACT
+ NO LICENSE
=
NO COMMISSION**



COUNSEL'S CORNER

I have been an attorney for almost 30 years now. During that time I have represented REALTORS®, brokers and sales agents, and their industry trade associations. Although Texas law never changed regarding licensure and contractual requirements, the issue of commissions continues to be litigated in every conceivable way in Texas. Inevitably the results are the same.

Here is the latest case demonstrating the futility of attempting to extract a commission from a party that has not signed a Commission Agreement and disputes a lawful obligation to pay it. In this case, the “broker” did not maintain a TREC license either.

Expo Motorcars, evidently the purveyor of exotic cars in Houston as I determined from their website (check the 2009 Spyker C8 Spider: <http://www.expomc.com/invsys/details2.php?id=8685> which can be yours for only \$209,995 + TTL), required more space. Jorge Lujan, sales manager at Expo, contacted Peter Jacobson to find a larger parcel. Lujan introduced Jacobson to Michael Kim, president of Expo, and there may have been an oral agreement that Jacobson would be paid a three percent fee if Expo purchased the property Jacobson located.

Jacobson found a property and started negotiations with the owner. As Lujan and Jacobson were meeting at lunch to develop a letter of intent, Kim called to inform Jacobson that his services were no longer required.

When Jacobson ultimately discovered that Expo had moved to the property Jacobson had located, Jacobson demanded his fee. It wasn't paid, and a lawsuit resulted.

The Houston trial court awarded Jacobson damages of \$45,000, based on a \$1.5 million purchase price, attorney's fees, pre-judgment interest and post-judgment interest. Expo appealed.

The Houston Court of Appeals determined that Jacobson's actions in attempting to locate suitable real estate for purchase or lease required licensure under the Texas Real Estate License Act, if no statutory exemption was applicable. The Court of Appeals further allowed that the TRELA also required a written contract obligating the defendant to pay a real estate commission or fee.

Mr. Jacobson possessed neither a brokerage license nor a written contract. Since there was no applicable exemption (such as the attorney-exemption), the trial court's judgment in favor of Mr. Jacobson was reversed and rendered instead for Expo and Michael Kim.

See Expo Holdings, LP v. Jacobson, 2010 WL 3307454 (Houston Court of Appeals – 14th Dist. 2010).

Bottom line:

1. Only brokers may lawfully charge and receive commissions or fees for real estate brokerage activity in Texas, assuming some very narrow exceptions are inapplicable.
2. Brokers may not lawfully collect real estate commissions or fees absent a written contract.
3. BTW it is a Class A misdemeanor in Texas if one acts as a broker or sales agent without appropriate licensure, or exemption from licensure. Check Texas Occupations Code 1101.758.

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