

# COMMISSIONS!



## *COUNSEL'S CORNER*

Just like virtually all of my readers, Zach Manning and IntraRealty, Inc. are TREC licensees. Today they seem to be connected through ownership; not sure about 2006 when this case started.

2006 was the year that Manning and IntraRealty accepted a listing from HomeEq, to sell Texas property. HomeEq was a mortgage servicing company. HomeEq accepted a purchase offer from Karen Vicknair for \$195,000 in 2007. While Karen's contract was pending, HomeEq transferred management of the property to Litton Loan Servicing. Manning and IntraRealty had no commission agreement with Litton.

Litton was unable to close the deal “. . . *because it did not have the correct person to sign the deed.*” So Karen terminated and received the return of her earnest money. Manning and IntraRealty then demanded that Litton pay a commission of \$11,500. Litton refused to pay the commission since the property had not been conveyed.

So Manning and IntraRealty sued Litton. The trial court, based on a jury's verdict, rendered judgment for Manning and IntraRealty for the \$11,700 commission, plus \$30,000 for attorney's fees. The trial court concluded that a series of emails in 2007 constituted a legally binding contract for Litton to pay a commission if Manning and IntraRealty procured a ready, willing and able cash buyer.

Litton appealed, claiming that TREC statutes require a written agreement, signed by the party who is to pay the fee. Manning and IntraRealty relied on not only various emails, but also the Contract itself. The Contract did not specify a commission amount, although it did indicate that the obligations of the parties to compensate brokers were governed by separate written agreements.

Regardless, Manning and IntraRealty were unable to produce a written commission agreement, signed by Litton or its agent, obligating Litton to pay Manning and IntraRealty a stated fee based upon the conveyance of an identified property.

Relying on the strict interpretation of the Texas Real Estate License Act and consistent with many other Texas appellate decisions, the Texas Court of Appeals

overturned the judgment of the trial court and rendered judgment for Litton. Without a written commission agreement signed by the party who is obligated to make payment, Texas laws were not satisfied and Litton owed nothing.

Litton wins. Manning and IntraRealty loses.

See *Litton Loan Servicing LP v. Manning and IntraRealty Inc.*; No. 05-10-00675-CV; Texas Court of Appeals - Dallas; April 26, 2012.

Lessons learned:

1. Commission agreements must be in writing and signed by the party obligated to pay the fee!
2. Commission agreements must identify the broker to whom the fee is payable!
3. Commission agreements must identify the property that is the subject of the transaction!

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