

# COMMISSIONS REBOOT!!!



## *COUNSEL'S CORNER*

In September 2010 Buffy Lawrence and Reyna Realty executed a listing agreement. The listing agreement engaged Reyna for three months to market and sell her property, in exchange for a 5% commission, to be shared with a cooperating broker if one was used in the deal by the buyer.

Although the listing term ended December 31, 2010, Reyna Realty's broker continued to list the property, post signage and generally market the property after it expired. Buffy never objected to these continuing services and efforts.

Reyna Realty received an offer to purchase the property and assisted Buffy by negotiating a higher purchase price. The deal was poised to close in March 2011, and the Seller's Statement provided for a commission payment to Reyna. Buffy, however, instructed the title agent to reduce the commission amount by 30%. Reyna rejected this proposal, so Buffy withdrew her offer and refused to pay Reyna anything.

The purchase and sale funded, and in October 2011 Reyna Realty sued Buffy Lawrence to recover a real estate commission. Reyna Realty attached the Purchase and Sale Contract to Reyna's lawsuit pleadings, which Contract contained a statement to the effect that "all obligations of the payment of brokers' fees are contained in separate written agreements."

It was Reyna's position that although the stated listing term had indeed expired three months before the sale date, both the Contract and Settlement Statement contained written evidence of an extension of the listing at least through the date of sale.

Buffy defended Reyna's claim by using a statute of frauds defense. Basically, that defense means that all commission obligations in the State of Texas must be in writing, signed by the party obligated to pay it, and no oral or unwritten modifications are typically allowed.

The trial court awarded Reyna its commission of \$14,440, plus \$36,000 in attorney's fees. Buffy appealed.

The Appellate Court, looking at the initial Listing Agreement, Purchase and Sale Agreement and Settlement Statement, concluded that the documents constituted a written extension agreement and defeated a statute of frauds defense. Similarly, even though the Seller's Statement that was eventually signed provided no compensation to Reyna Realty, it still indicated that Reyna Realty was serving as the broker for the Seller.

And further, Buffy had willingly accepted the benefits of the services offered by Reyna Realty, which services were beneficial to Buffy.

From there it was an easy leap to legal conclusions of "ratification" and "non-repudiation."

Judgment for Reyna Realty was affirmed. Reyna wins; Buffy Lawrence loses. See *Lawrence v. The Reyna Realty Group*; Cause No. 01-13-00819-CV; Court of Appeals of Texas, First District, Houston Division; May 15, 2014.

Lessons learned:

1. Reyna Realty forgot to get its listing agreement extended, or maybe Reyna made the request but Buffy Lawrence was unwilling to sign it. Either way, if the listing agreement had been properly extended then one might assume that a lawsuit would not have been necessary and Reyna would have been paid in full at closing.
2. While this case was ultimately won by the broker, a slight variation in facts would yield a different result. If the broker's name was not included in the Purchase and Sale Agreement, then I suspect Buffy would have prevailed.
3. Do not assume that just because you continue working for a principal's benefit after the expiration of your contract that you will get paid if your efforts result in a closing. Get it in writing, **\*before\*** expiration of your agreement.

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