

REAL ESTATE BROKER UPDATE

A publication of Saiber Schlesinger Satz & Goldstein, LLC's Real Estate Group
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New Jersey Court Sends Clear Message to Real Estate Brokers: *Put It in Writing (and Get It Signed)!*

Recently, in *Jeffrey Realty, Inc. v. Kevin Ventice, et al.*, Docket No. A-0506-05T1, the New Jersey Appellate Division held that a commercial real estate broker was not entitled to payment of a brokerage commission because the broker failed to reduce to writing his prior verbal agreement with the seller concerning the payment of a brokerage commission.

Under the relevant facts of that case, the seller of a commercial property in New Jersey was approached by a broker who requested permission to show the property to a prospective buyer. The seller provided the broker access to the property to show it, and the parties orally agreed that if that property was sold to this buyer, the seller would pay a commission. There was no evidence, however, that the parties agreed upon a precise amount of commission, although the broker testified that he understood the seller would pay a six (6) percent commission upon sale at closing.

Ultimately, the buyer that the broker

introduced to the property entered into a contract of sale with the seller, under which terms both the buyer and seller agreed that no brokerage commissions were due upon closing. The broker then sued for non-payment of the brokerage commission.

While there was no dispute that the ultimate purchaser of the property was, in fact, introduced to the property by the broker, and that a prior verbal agreement concerning the payment of real estate commission existed, the broker's failure to confirm that understanding in a writing setting forth the material terms of the agreement — namely, the commission rate — required the dismissal of the commission claim. In fact, even though there was no dispute that the broker sent a letter to the seller reminding him of his right to a commission, the failure to mention in that letter the prior verbal agreement to pay a commission was fatal to the claim.

Moreover, because that writing was never signed by the seller, the court held that

there was never a meeting of the minds concerning the payment of a commission in the event of sale.

Adding to what some might already consider a harsh or unfair result, even equitable principles of quantum meruit and unjust enrichment – generally designed to provide recovery of the reasonable value of services provided and prevent the other party from unfairly benefitting from those services without paying for them – did not provide any relief to the broker. In that regard, the Appellate Division ruled that such equitable principles could not be used to

circumvent the clear statutory requirement imposed by the New Jersey statute of frauds (N.J.S.A. 25:1-16), which mandates that all commission agreements be reduced to writing, containing material terms such as the commission rate, and be signed by the seller.

Simply put, it is sound practice for all real estate brokers in this state to set forth all commission agreements in writing, with clear terms, and have them signed by the parties. Otherwise, the broker runs the risk of having no legal recourse for an unpaid brokerage commission.

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