

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

_____	:	JANUARY TERM, 2012
SIDNEY E. GABLE ASSOCIATES,	:	
INC.,	:	NO. 0602
	:	
Plaintiffs,	:	COMMERCE PROGRAM
	:	
v.	:	
	:	
10551 DECATUR ROAD PARTNERS,	:	
LP,	:	
	:	
Defendants.	:	
_____	:	

ORDER

AND NOW, this _____ day of October, 2013, after a Bench Trial held on October 2, 2013 and October 3, 2013, it is hereby **ORDERED** that judgment is entered in favor of Plaintiff in the amount of \$92,083.80.

BY THE COURT:

ALBERT JOHN SNITE, JR., J.

testimony that on numerous occasions Defendant agreed to pay Plaintiff a 6% commission. Defendant never explicitly denied Plaintiff's testimony. Although the oral agreement was clear that Plaintiff would receive a 6% commission, the agreement was not clear as to the terms of payment. The oral agreement does not fail for lack of definiteness because in the real estate industry payment terms are not something that must be predetermined. In the absence of precise terms for payment, if the Court was upholding the oral agreement, the terms of payment would be the same as those contained in the exclusive agent agreement with the Flynn Company.

b. Written Memorandum.

Pursuant to Defendant's promise to pay Plaintiff a 6% commission, Plaintiff sent a commission letter to Defendant dated September 1, 2010.¹ On September 29, 2010 Plaintiff emailed the September 1, 2010 commission letter to Defendant after Defendant claimed that he never received the commission letter.² This Court finds that the commission letter provided to Defendant on both September 1, 2010 and September 29, 2010 is a written memorandum memorializing Defendant's oral agreement to pay Plaintiff a 6% commission.

c. Real Estate Licensing and Registration Act.

In this case, it is undisputed that there was never a written agreement signed by Defendant agreeing to pay Plaintiff a 6% commission. The Court finds that Defendant's interpretation of the applicable statute, Section 455.606(a)(b) of the Real Estate Licensing and Registration Act ("RELRA") is correct. The Court accepts Defendant's interpretation of RELRA as set forth in Defendant's Memorandum of Law page 3. "RELRA actually provides two (2) instances where a written agreement is not required: (1) a broker can collect a commission from a *seller or landlord* if (a) there is an *open listing* agreement and (b) the *seller*

¹ Pl's Am. Compl. ¶ 21.

² Pl's Am. Compl. ¶ 23.

or landlord is provided with a written memorandum stating the terms of the agreement; or (2) a broker can collect a fee from a *buyer or tenant* of (a) there is a *nonexclusive agreement for him to act as a buyer agent* and (b) the *buyer or tenant* is provided with a written memorandum stating the terms of the agreement.”³

Although the parties agree that the Defendant had an exclusive listing agreement with the Flynn Company, Plaintiff maintains that it had an open listing agreement with the Tenant and as such they are permitted to collect a full commission from Defendant without a signed agreement because the commission letter constitutes a written memorandum under 1(b) above.

Under RELRA, Plaintiff’s ability to collect the 6% commission without written agreement, based only on a written memorandum, is dependent upon the existence of an “open listing agreement” as discussed in 1(a) above.⁴ In this case, there was not an open listing agreement because Defendant had an exclusive listing agreement with the Flynn Company. Without an open listing agreement and a written agreement, Plaintiff’s written memorandum is not sufficient evidence of an oral agreement under RELRA. Plaintiff cannot enforce Defendant’s oral agreement to pay 6% commission

d. Damages.

Plaintiff is not entitled to 6% commission as discussed above. Plaintiff is, however, entitled to 3% commission in the amount of \$92,083.80. By letter to the Court dated October 4, 2013 Plaintiff claimed damages in the amount of \$184,167.60. Plaintiff’s damages were

³ Def. Memo Law p. 3.

⁴ An open listing agreement is defined as “[a] nonexclusive listing agreement governed by a memorandum or contract wherein the seller retains the right to employ multiple brokers to sell or lease the property.” 49 Pa. Code § 35.201.

calculated by taking the 6% commission and interest claimed by Plaintiff and dividing the number in half to represent 3%.⁵

The entire rationale surrounding Defendant's payment schedule was so Defendant could pay Plaintiff as the property generated revenue. The property has been sold and Plaintiff's damages in the amount of \$92,083.80 are due immediately.

BY THE COURT:

ALBERT JOHN SNITE, JR., J.

⁵ If any party feels as though the calculation of interest due to Plaintiff is in error such issues can be addressed in post trial motions.