

Real estate firms clash over ambiguous contract – Dispute must be arbitrated twice

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\$1.2 million award

The plaintiff was a Boston-based regional commercial real estate brokerage firm. The defendant was an international commercial real estate brokerage firm that contracted with the plaintiff to open a Boston office to obtain local and worldwide real estate leads from New England-based firms and investors.

The dispute arose out of a poorly drafted agency agreement under which the plaintiff understood and believed that it had been designated as the defendant's exclusive New England agent for all transactions involving real estate in New England and all referrals of transactions outside New England originating from a client headquartered in New England.

Under the plaintiff's construction of the agreement, the plaintiff alone would handle inbound transactions and receive commissions for doing so and would receive commissions on all outbound transactions as well.

The defendant viewed the contractual relationship as far more porous, believing that other agents were free to poach New England deals and exclude the plaintiff from outbound transactions, thus depriving the plaintiff of commissions otherwise due. The defendant went so far as to open a competing office in New England.

As asserted by the plaintiff, the jewel in its crown was the confidential business information developed by the plaintiff during 15 years in the commercial brokerage business. Without the plaintiff's confidential information, the defendant was left to making "cold calls," which are time-consuming and largely unproductive. With the plaintiff's confidential information, the defendant was able to open the door to the major players in New England, leading to millions of dollars in commissions that the defendant would not have otherwise been able to earn.

The arbitration, resulting in an award of \$1.24 million, was the epilogue to a May 1, 2006, decision in which a judge vacated an earlier arbitration award by the defendant's CFO for \$97,154.07 on the grounds that, although the parties had agreed in writing to use the defendant's CFO as the arbitrator, the CFO's arbitration decision could not stand because of the "evident partiality" of the arbitrator.

The parties then agreed to a genuinely impartial arbitration because a trial on each of the plaintiff's 137 claims threatened to be unending. Although each claim grew out of the same agency contract, each had its own set of facts and circumstances, giving rise to the plaintiff's claims and the defendant's defenses.

In order to circumscribe the arbitration within reasonable limits, the parties agreed that they could each submit as many exhibits as they cared to but that affidavits and briefs would be limited to a total of 300 pages. The parties also agreed to limit their oral presentations to the arbitrator to three hours each.

The arbitrator took more than two months to render his award on each separate claim. The award was 10 times higher than the prior award that had been vacated by the court on grounds of "evident partiality."

Type of action: Contract

Injuries alleged: Unpaid commissions

Name of case: Vesper Realty Advisors Inc. v. Binswanger Management Corp., et al.

Court/case no.: Suffolk Superior Court, No. 04-4245BLS

Tried before judge or jury: N/A (arbitrated)

Name of arbitrator: Eric Green

Amount of arbitration award: \$1,241,291

Date: April 15, 2008

Attorney: Robert D. Cohan, Cohan Rasnick Myerson, Boston (for the plaintiff)