



# the Advocate

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## Real Estate Broker Commission Earned Even in Absence of Closing of Title

Under New Jersey law, there are circumstances under which a real estate broker's commission may be earned even in the absence of closing of title - in fact, even in the absence of a signed contract for sale of real estate.

A 1971 Appellate Division decision held that the failure of a Seller to enter into a contract by reason of Seller's fault does not exclude liability to the broker, Stanchak v. Cliffside Pk. Lodge # 1527, L.O.M., 116 N.J. Super. 471 (App.Div. 1971).

### The Stanchak Decision

In Stanchak, the Appellate Division stated:

... where the broker has procured a purchaser willing and able to buy on the seller's terms as stated to the broker, and there is a failure of the principals to enter into a formal contract of sale by reason of the seller's fault, as, e.g., where he had subsequently changed his mind ... the seller is liable to the broker. ... where the broker sues the owner "because of an alleged unreasonable refusal to enter into a contract of sale ... with the proffered willing and able customer," the broker must show financial ability of the purchaser to perform at the closing of title.

Thus, the Appellate Division in Stanchak found that the trial court erred in denying recovery to the real estate broker based upon the fact that the principals of the Seller did not enter into a formal contract of sale.

### No Written Contract of Sale Required

Accordingly, not only is it unnecessary to have actual closing of title, but it is also unnecessary to have a real estate sales contract to establish liability to the broker under the decision in Stanchak v. Cliffside Pk.

*Continued on reverse page...*

### **Law Firm Briefs**

In November 2000, our Law Firm celebrated its 12th anniversary.

#### Since Our Last Issue ...

After a brief absence, Kathleen A. La Vallie, Esq. returned to the firm as an associate in November 2000.

#### Great Quotations ...

"Our greatest glory is not in never falling, but in rising every time we fall."

- Confucius

Lodge # 1527, L.O.M., 116 N.J. Super. 471 (App. Div. 1971).

In another decision, Van Wagner v. Enz, 75 N.J. Super. 251 (App. Div. 1962), the Appellate Division ruled in favor of the sellers and against the broker. In this transaction, the broker and seller entered into an exclusive listing agreement to sell property located in Somerset County on July 3, 1958. The seller agreed to pay a 10% commission provided the price for the property to be sold was \$1,000.00 an acre.

A written agreement for sale was signed between the seller and the buyer dated January 8, 1959 memorializing the reduced sales price of \$700.00 per acre (as opposed to the original list price of \$1,000.00 per acre). In addition, the agreement also provided that the actual acreage was to be determined by a survey and that seller would retain five acres including his home. However, despite the fact that the decision in Van Wagner v. Enz clearly states that there was a written agreement, it was held unenforceable.

#### Contract Held Unenforceable

The problem with the written agreement in the Van Wagner v. Enz decision was that there had been no agreement "on what land was to be sold" Van Wagner v. Enz, at 257, and therefore the written agreement at the \$700-an-acre figure was not specifically enforceable. Because there was no definite identification of the five-acre tract to be retained by the sellers, the parties had not agreed on what land was to be sold. Therefore, the broker had not produced a ready willing and able purchaser upon terms acceptable to the seller. Van Wagner v. Enz, at 256.

In Joseph Hilton & Associates, Inc. v. Evans, 201 N.J. Super. 156 (App. Div. 1985), a case which incidentally cites the Van Wagner v. Enz (Joseph Hilton & Associates at 168), the Appellate Division properly set forth the general rule that:

...if property is placed in the hands of a broker for sale at a certain price, and a sale is brought about through the broker as a procuring

cause, he is entitled to commissions on the sale even though the final negotiations are conducted through the owner, who in order to make a sale, accepts a price less than that stipulated to the broker. The law will not allow the owner of the property sold to reap the fruits of the broker's labor and then deny him his just reward. Id. at 169.

In addition, the court in Joseph Hilton & Associates examined the contention that where the transaction is not consummated, the broker is not entitled to a commission earned.

The court concluded that only where the language used in the brokerage agreement creates a clear and unequivocal condition precedent may a case be taken out of the general rule. Upon procuring a ready, willing and able party, the broker has earned its right to be paid a commission because "beyond this the consummation of the transaction was dependent upon the actions of the parties." Joseph Hilton & Associates, at 170.

Similarly, in a lease of property case, it was held that the presence of a contingency clause in a real estate commission agreement that provided the commission is due only in the event the lease is actually executed will not prevent the broker's recovery of commissions if the transaction was defeated by the seller's willful conduct. A.S. Goldstein Co. v. Bloomfield Plaza Assoc., 272 N.J. Super. 59 (App. Div. 1994)



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