

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-053

AUGUST TERM, 2006

Stanley Okin d/b/a Stan Okin Properties

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APPEALED FROM:

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v.

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Rutland Superior Court

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Stratton Buyer Brokerage, LTD

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DOCKET NO. 323-5-03 Rdcv

Trial Judge: William D. Cohen

In the above-entitled cause, the Clerk will enter:

In this dispute between real estate brokers over the division of a commission, plaintiff Stanley Okin d/b/a Stan Okin Properties (Okin) appeals from a superior court judgment in favor of defendant Stratton Buyer Brokerage, LTD (Stratton). Okin contends the court erred in awarding Stratton half of the commission because: (1) there was no written agreement between the brokers to split the commission, as allegedly required by the Vermont Real Estate Commission Rules; and (2) there was no other evidence to support such an agreement. We affirm.

The facts may be summarized as follows. Okin entered into a listing agreement with the owners of certain

real property in Dorset, Vermont. The agreement listed the asking price as \$125,000, and provided for a ten percent sales commission. Andrea Linkin-Butler is a principal and broker with defendant Stratton Buyer Brokerage. Linkin-Butler contacted Okin to show the property to a client. Although the client was ultimately uninterested, Linkin-Butler and her husband decided to make an offer on the property, with Stratton acting as their buyer-broker. Linkin-Butler testified that she met with Okin twice, and that he twice agreed to divide the commission with Stratton in the event of a sale. Okin denied that he had made such an agreement. Linkin-Butler also testified that she had been told of a prior, full-price offer, and decided therefore to offer \$7,000 more, or \$132,000, reasoning that her firm, Stratton, would realize a commission of \$6,600 (half of the ten percent commission of \$13,200). It was generally undisputed that industry practice was to divide commissions between buyer=s and seller=s brokers on a fifty-fifty basis.

The Linkin-Butlers= offer was accepted, and they entered into a purchase and sale agreement with the sellers in July 2002. In addition to the buyers and sellers, Stanley Okin also signed the agreement as the listing agent for the sellers. Under the caption AEfforts of Agent(s),@ a provision of the agreement stated: ASeller and purchaser agree that Stan Okin Properties as listing agency of Seller and Stratton Buyer Brokerage Ltd. as buyer=s agent representing Purchaser brought about this Contract.@ At the closing in August 2003, however, Okin objected to a division of the commission, resulting in a delayed closing. The deal eventually closed when the parties agreed to deposit the disputed \$6,600 in an escrow account.

Okin then brought this declaratory relief action, asserting that Stratton was not entitled to a commission under the Vermont Real Estate Commission Rules absent a written agreement with Okin. Following a bench trial, the court issued a written decision in favor of Stratton. The court found that Aa valid agreement existed between the parties that they would split the sales commission as is customary in the industry.@ Accordingly, the court entered judgment for Stratton in the amount of \$6,600. This appeal followed.

Okin claims that the Vermont Real Estate Commission Rules require a written agreement between brokers to divide a commission. The rules to which Okin refers, and the cases in which we have strictly interpreted the writing requirement for a sales commission, apply to brokers and clients and are principally intended to protect

the latter from unfounded claims by the former. See Rule 4.12(c), Vermont Real Estate Commission Laws and Rules (a brokerage firm may receive only the compensation provided in a written agreement provided by the firm and its client); Bensen v. Gall, 158 Vt. 106, 110-111 (1992) (holding that language in purchase and sale agreement did not cure deficiencies in listing agreement, thereby entitling broker to commission from seller, because purchase agreement did not provide same protection to the public to ensure fair dealing and prevent fraud); Arjay Props., Inc. v. Hicks, 143 Vt. 335, 337B338 (1983) (holding that to recover commission from client, broker must have a written listing agreement containing all essential terms); but see MacDonald v. Roderick, 158 Vt. 1, 7 (1992) (violation of Real Estate Commission Rules will not bar recovery of commission where deficiency was because of failure to use required language or because of the omission or misstatement of a required term). These cases and rules do not address agreements between brokers to share commissions. Nor do other provisions cited by Okin, such as Rule 4.10 dealing with agency agreements between brokerage firms, deal with commission-splitting agreements between brokers.

It is well settled that, under Vermont law, to be entitled to a commission, a broker must show that he procured a purchaser ready, willing, and able to purchase at the price and upon the terms prescribed by the seller. Osler v. Landis, 138 Vt. 353, 356 (1980). As noted, the purchase and sale agreement in this case, which was signed by Okin, expressly acknowledged Stratton as one of the procuring agents of the sale. In addition, there was testimony that Okin had agreed to split the commission, as well as testimony that industry practice was to divide commissions between buyer's and seller's brokers on a fifty-fifty basis. Accordingly, we conclude that the evidence was sufficient to support the court's finding of a valid agreement between Okin and Stratton to divide the sales commission, and its judgment awarding Stratton fifty percent of the commission, or \$6600. See Bergeron v. Boyle, 2003 VT 89, & 15, 176 Vt. 78 (trial court's findings are granted wide deference because it is in a unique position to assess the credibility of witnesses and the weight of the evidence presented); Quenneville v. Buttolph, 2003 VT 82, & 13, 175 Vt. 444 (we will uphold court's findings as to whether parties entered valid agreement unless clearly erroneous).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice