

A \$1,000,000 COMMISSION WIN

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After Almost Two Years of Litigation, Our Client Broker Receives His Check.

If you attended any of Trainor Fairbrook's presentations about the Sacramento Commercial Real Estate Network (SCRENet) early last year, you will recall that we told you about one of our broker commission cases where a \$1,000,000 commission was at stake.

We are pleased to report that, after almost two years of litigation, our client broker won! A very happy broker received a \$1,000,000 check that was delivered to him on February 20.

The facts of this case are interesting and instructive (but somewhat complicated for a brief bulletin, so they are edited herein). The corporate Seller owned an office building in Sacramento, and wanted to sell it. The "President" of the company signed the Exclusive Sales Listing Agreement with our broker client (meeting the requirements for a written agreement between the broker and the seller to sell (or lease) a property). Our client found a buyer within a few months, and a purchase agreement was entered into by the Seller and Buyer, acknowledging that the broker was entitled to a commission "pursuant to a separate agreement." The purchase agreement was again signed by the "President" of the Seller.

Unbeknownst to the broker, the Seller corporation was in the midst of internal turmoil. One faction of shareholders claimed that the "President" had been duly elected, and another faction of shareholders claimed that another Board and President had been duly elected. This "other Board and President" claimed that the "President" who signed the listing agreement and the purchase agreement had no authority to execute those documents with the broker or the Buyer, and, therefore, the broker was not entitled to any commission and the buyer could not buy the property.

The buyer, when told that his contract was being disavowed, sued for specific performance, and the sale of the building eventually closed. Upon close of escrow, the "other Board and President" still claimed that no commission was due to the broker, but under threat of litigation agreed to leave \$1,000,000 in escrow, which amount was subsequently deposited with the Sacramento

Superior Court in conjunction with our lawsuit. Without going deeper into the convoluted facts, our firm's job was to convince the Court that our client had been duly engaged by the corporate seller and was entitled to the \$1,000,000 commission. Based in large part on the fact that the seller had received the benefits from the sale of the property and had retained the proceeds from the sale, we were successful in establishing our client's entitlement to the commission, as a matter of law. We were also confident that we could prove at trial that our broker was entitled to interest on the \$1,000,000 and his attorneys' fees. Rather than waiting to proceed to trial and risking the seller appealing a court decision, our client authorized us to negotiate a settlement for \$1,000,000, which after several negotiations was agreed upon, and the \$1,000,000 was released to our client by the court, ending the litigation.

John Fairbrook, who handled this case as the head of Trainor Fairbrook's Litigation Section, said the following about the case: *"This is a case where the broker followed custom and practice, and assumed the "President" had the authority to sign for the corporation. Unfortunately, he was caught up in unknown internal corporate disputes. To bolster a broker's position in this type of case, brokers should obtain both the President's and the corporate Secretary's signatures, or a corporate Board resolution. Under California law, if you have those two signatures and they match the records on file with the Secretary of State, it is presumed that you have the correct authority. At the time this transaction came about, however, you could not look up the corporate officers for California corporations online. You literally had to go to the Secretary of State's office, or mail them a letter asking for the information, which sometimes took weeks. Today, you can look up a corporation's filings online (<https://businesssearch.sos.ca.gov/>) and determine the correct corporate officers (also available for the managers of LLCs). I recommend looking up every corporation and LLC signing a listing agreement or purchase agreement to make sure that the signatures you are obtaining match the Secretary of State filings. If not, it's probably a good time to start asking questions."*