

BUYER'S BROKER WINS COMMISSION CASE

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Another court has ruled that a buyer's broker is entitled to a commission, even though the transaction did not close.

In this latest case, Standard Pacific Corporation entered into a buyer's listing agreement with a California real estate broker, RC Royal Development and Realty Corporation. The 2005 listing agreement engaged RC to find condominium projects for it in Los Angeles County, agreeing to pay 1½% of the gross sales price as a commission.

RC presented Standard Pacific with a project known as Union Station Village, containing 278 residential condominium units, with parking and related facilities. Standard Pacific entered into a purchase agreement with the Seller for \$116,000,000 on the to be completed condominiums.

Standard Pacific paid the Seller \$6,000,000 as earnest money, and approved the project at the end of due diligence. However, the close of escrow was subject to the Seller completing the units and obtaining a certificate of occupancy.

The Seller was delayed in completing the construction, and eventually, in August, 2006, Standard Pacific walked from the project because the downtown Los Angeles condominium market suffered a reversal and the project was "no longer economically feasible or beneficial." Standard Pacific and the Seller entered into a termination agreement which did not include any payment of a commission to RC.

RC sued Standard Pacific for its \$1,740,000 commission. Standard Pacific defended the lawsuit on the basis that the transaction had never closed. The court, in its review of the listing agreement, focused on the language that the commission would be payable "in the event that

the property is purchased by [Standard Pacific] or an affiliate of [Standard Pacific] within one year of the date of this agreement.” The listing went onto say that the term “purchase” means the acquisition of “any direct or indirect beneficial interest in the property.”

The court, in analyzing the facts in this case, relied heavily on the law created by our firm in the 1993 case of R.J. Kuhl Corp. v. Sullivan. The court confirmed that once a buyer has entered into a contract for the purchase of real estate, it has a “beneficial interest” in the property. In this case, Standard Pacific had even begun its sales program for condominiums in the project.

Standard Pacific countered that the listing agreement provided that the commission was not due until close of escrow. The court distinguished the time for payment from the date the commission was earned and said that the commission had been earned, essentially when the deal went “hard,” and that the provision regarding payment at closing simply involved the timing of the payment of the commission.

As a result, the court ruled in RC’s favor.

The lessons to be learned from this case are:

1. The broker would have had no claim for a commission if it had not entered into a written agreement with Standard Pacific. A condition precedent to any broker receiving a commission is to have a written listing agreement. (CC§1624(a)(4)).
2. In this case, as in several recent cases, the standard commission agreement provided that the commission was earned when the “purchase” occurred or the property was “sold.” A property is “purchased” and “sold” when the parties have entered into a purchase agreement and “a legally binding commitment to sell the property comes into existence.” CC§1086. Therefore, if there is no intent to pay a commission until the deal actually closes, the listing agreement should be modified accordingly.
3. Finally, saying a commission is not payable until “close of escrow” does not necessarily mean that it will not be due if escrow does not close. Contract

language should be reviewed carefully.

Case Name: RC Royal Development and Realty Corporation v. Standard Pacific Corporation
(September 29, 2009)

If you have any questions with respect to this case or brokerage commissions in general, please contact Mr. Trainor. Mr. Trainor is a member of the American College of Real Estate Lawyers, American College of Mortgage Attorneys and has taught broker law to attorneys for over 15 years.