



Real Estate Brokers May Get A Commission Even Without A Written Contract

The Massachusetts Supreme Judicial Court recently ruled that a real estate broker could obtain damages stemming from a breach of contract of an oral agreement, even where the broker did not produce the final closing.

In *Biping Huang v. Jing Ma*, a licensed real estate broker sued two former clients alleging that they failed to comply with their obligations under a verbal contract regarding the purchase of a new home. Per the agreement, the broker would act as exclusive broker for the couple for one year and would receive a broker's commission at closing. The broker was required to use reasonable efforts to help the couple find and purchase a home they liked. If the couple located homes on their own or from other referral sources, they would refer the deal to their exclusive broker and notify other brokers that they were already represented.

For ten months, the broker diligently searched for properties, showed the couple at least ten homes, advised them on mortgage financing and market values, and made four offers, but none came to fruition. Thereafter, while still within the one-year exclusivity period, the couple found a home they liked without the assistance of their exclusive broker. They bought the home through RE/Max, which acted as dual broker, without notifying RE/Max of their arrangement with their own broker and without referring the property to their own broker. The couple terminated their relationship with their broker by email, advised her that they had hired RE/Max to buy a house, and offered her a gift card to express their gratitude. RE/Max received commission at closing for being both the buyer's broker and seller's broker.

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Firm News



Darshana Indra

Darshana Indra was named to the Massachusetts Bar Association's Nominating Committee to evaluate leadership applicants.

Darshana presented a Massachusetts Bar Association program entitled, "Microaggressions in the Workplace, Part 2."



Payal Salsburg

Payal Salsburg moderated the Women's Bar Association program entitled, "Finding Your Voice in the Courtroom and Boardroom."

Payal was inducted as the Treasurer for the Women Bar Association's Board of Directors.

Payal presented a seminar entitled, "Advising Small and Closely-Held Businesses: Top Challenges."



Jessica Conklin

Jessica Conklin was Certified by ATIXA for Investigation Report Writing in Title IX matters in colleges and universities.



Matthew Kane

Matt Kane was reappointed as a Special Assistant Attorney General (SAAG) by Attorney General Andrea Joy Campbell.

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Upon learning of the circumstances, the broker filed suit against the couple. The trial court held that the broker was not entitled to any commission because their agreement was never put in writing. The broker appealed. The Appeals Court reversed, stating that the Massachusetts statute of frauds, which renders contracts unenforceable unless they are in writing, specifically exempts real estate broker contracts from that rule. The couple further appealed to the SJC.

The SJC concluded that an enforceable contract did in fact exist between parties: in return for the broker's services, she would receive a commission. The parties agreed to be exclusive and the couple agreed to notify others of the exclusivity. The SJC noted that the contract had enough specificity to alert the couple to the situations in which they could be liable.

Then, the SJC found that the couple breached the contract when they failed to utilize their own broker as buyer's agent, failed to refer the RE/Max listing to her, failed to inform RE/Max of their agreement with their broker, and failed to pay their broker the commission owed. The SJC declined to adopt a rule that precludes recovery unless the contract on which the broker relies contains a clear statement that "the broker is entitled to receive a commission ... regardless of whether the broker played any role in effecting the desired sale or purchase."

In determining the proper remedy, the SJC looked at the broker's expectation damages, to place "the aggrieved party in roughly the same position in which it would have been had the party committing the breach complied with the contract." Here, the broker expected to receive the commission at closing and was therefore entitled to that commission.



As a practical matter, buyers of residential real estate may choose to find a home either through a broker or by doing the leg work on their own without a broker. As the SJC recognized, "this case reflects on the new realities of the 21st century residential real estate market, including not only the recognition of buyer's agents with defined duties but also the destabilizing effect of multiple listings and the ubiquitous display of such listings on the Internet on buyers, sellers, and brokers alike."

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