

Broker Awarded Fees in Massachusetts Where Lease Was Not Signed

Article By:

Joshua M. Alper

A judge of the Superior Court has recently awarded brokerage fees to a realtor despite that the landlord did not enter into a commercial lease with the tenant for which the realtor was compensated. Finding that landlord had acted in bad faith, the Court distinguished the Supreme Judicial Court's 1975 landmark decision in *Tristram's Landing, Inc. v. Wait*, which established the general rule that in order to earn a commission, a broker must not only obtain a ready, willing, and able tenant, but that a transaction must actually be signed. The Court found that the defendant landlord had encouraged the agent to market vacant space to medical groups, knowing that for business reasons an existing supermarket tenant of adjacent space objected to medical tenants. When the plaintiff real estate agent brought a dental practice to rent the space, the defendant landlord used the threat of a dental practice as a stalking horse to persuade its existing supermarket tenant to expand into the premises at twice the rent which the dental practice would pay.

Notwithstanding that landlord had reserved the right to accept or reject all offers in the broker's listing agreement, the Court found that landlord had actively worked against the broker "by using its efforts to obtain a bona fide new tenant to leverage an existing tenant into the space without allowing the agent to broker that deal." The decision is *Ria K. McNamara, Inc. v. Fore Cast Shrewsbury Limited Partnership*. The plaintiff realtor had worked for approximately a year to locate the prospective dental practice tenant, with whom a lease was then fully negotiated with landlord's participation. When the final lease was presented for signature, landlord responded that the adjacent supermarket had asked for two weeks "to decide on their right of refusal" although, in fact, the supermarket tenant had no such right. Rather, landlord used the fact of the prospective tenant to persuade the supermarket tenant to expand its premises into the entirety of that which would have been rented to the dental practice.

Noting that the defendant landlord had an exclusive brokerage arrangement with the plaintiff realtor which gave realtor the exclusive right to market the property and to be listed as broker by name in any lease agreement for space in the shopping center, the Court awarded a brokerage fee based on the supermarket expansion notwithstanding that the realtor did not participate in that transaction. The Court held that the plaintiff realtor had performed "all duties required of her by the Listing Agreement over the course of more than three years. Her failure to seal the deal was directly and solely due to "bad faith dealing and misconduct" on the part of landlord thereby breaching the Listing Agreement with the plaintiff broker.

The takeaway is that where there has been egregious unethical conduct by a party, the Court may fashion an equitable compensation.

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