

BANKER & TRADESMAN

THE
WARREN
GROUP
Since 1872
Real Estate & Financial Information

THE FINANCIAL SERVICES AND REAL ESTATE WEEKLY FOR MASSACHUSETTS

LAW OF THE LAND

CONSIDERING CONTRACTS

Appeals Court Allows Broker's Claim Against Former Clients

Winchester Couple Switched Agents, Prompting Lawsuit

BY CHRISTOPHER R. VACCARO

SPECIAL TO BANKER & TRADESMAN



Christopher Vaccaro

A Winchester couple learned last June in *Huang v. RE/MAX Leading Edge*, that a real estate broker can enforce an unwritten exclusive brokerage contract against them, even if the broker did

not produce a closing.

Biping Huang claimed that, in 2016, Xinhang Sun and Jing Ma entered a verbal contract to hire her as their exclusive buyer's agent for one year. In return, Huang promised to use reasonable efforts to find them a new home. She also claimed that Sun and Ma verbally agreed to list their existing Winchester home with her, after they bought a new home.

Huang showed Sun and Ma several homes, advised them on valuation and financing, and offered them a bridge loan to facilitate a purchase. However, in 2017, Sun and Ma contracted to buy a home in Winchester through RE/MAX Leading Edge. They advised Huang that they had hired a RE/MAX broker to buy a house, and offered Huang a gift card to express their gratitude. Sun and Ma bought a new home for \$999,000 and sold their former



The state Appeals Court ruled in favor of a real estate broker who sued for breach of contract after a client switched agents.

home for \$502,000, both within the one-year exclusivity period. RE/MAX received commissions on the two deals.

Who Promised What?

Huang sued Sun and Ma for breach of contract, and RE/MAX for tortious interference and unfair and deceptive business practices. The Superior Court dismissed

Huang's claims against RE/MAX, and allowed Sun and Ma's motion for summary judgment dismissing Huang's claims against them. Huang appealed.

The Appeals Court first considered Huang's breach of contract claim against Sun and Ma regarding the purchase of their new home. The court discussed the Massa-

Continued on Page 2

chusetts statute of frauds, which renders contracts with loan and business brokers unenforceable unless they are in writing. However, the statute specifically exempts real estate broker contracts from that rule. Therefore, Huang's lack of a written agreement did not prevent her from suing Sun and Ma for breach of contract.

Sun and Ma bought a new home for \$999,000 and sold their former home for \$502,000, both within the one-year exclusivity period. RE/MAX received commissions on the two deals.

The court next compared "unilateral" contracts, where only one party makes a promise, with "bilateral" contracts, where both parties exchange promises. According to the court, unilateral contracts are generally terminable at will. In contrast, neither party can terminate a bilateral contract without the other party's assent. The court recognized that Huang allegedly promised to use reasonable efforts to find a home for

Sun and Ma, and Sun and Ma allegedly promised to work exclusively with Huang. The parties' promises to each other established a bilateral contract, which Sun and Ma could not terminate at will.

The court then discussed whether Huang could sue Sun and Ma even though she did not procure a home sale for them. The court cited *Tristram's Landing, Inc. v. Wait*, a landmark 1975 case, for the general rule that brokers only earn commissions if they produce "ready, willing and able" parties who enter binding contracts that ultimately close. This principle applies whether brokers contract with sellers or buyers. The court distinguished Huang's case from *Tristram's Landing*, noting that Huang claimed a commission as damages because Sun and Ma breached an exclusive brokerage contract, not because Huang had procured a seller. The court realized that a ruling against Huang, under these circumstances, would mean that brokers could not claim commissions as damages when their clients breach exclusive contracts.

Court Vacates Judgment on Home Purchase

The court vacated the Superior Court's judgment regarding Sun and Ma's home purchase, and remanded that part of Huang's case to the superior court for further proceedings. The court cautioned, however,

that Huang still had the burden of proving her unwritten contract at trial.

The Appeals Court had less sympathy for Huang's claim regarding the unwritten listing agreement to sell Sun and Ma's home, and her claims against RE/MAX. The court observed that Huang did not promise to make any efforts to sell Sun and Ma's home under the unwritten listing agreement. Therefore, Sun and Ma could terminate the listing agreement with Huang at any time until Huang produced a buyer, which never happened. As to RE/MAX, the court noted that Huang's complaint made no allegations that RE/MAX acted improperly. Huang did not even allege that RE/MAX knew of any exclusive contracts involving Huang. The court upheld the dismissals of Huang's listing agreement claim and her claims against RE/MAX.

Huang's case offers some lessons. First, real estate brokers should require their clients to sign written brokerage contracts stating the parties' expectations. Second, buyers and sellers should not seek and obtain services from brokers without written brokerage contracts. Third, brokers should ask clients for written disclosures, with indemnities, as to prior relationships with other brokers. ◀

Christopher R. Vaccaro is a partner at Dalton & Finegold in Andover. His email address is cvaccaro@dfllp.com.