



Courtside *Newsletter!*

Commission Sharing Agreements Between Agents

BY: JEFFREY W. SMETANA, ATTORNEY AT LAW

Collaboration is usually beneficial in any relationship. In business especially, combining the talents and efforts of multiple professionals can produce results greater than the sum of the parts. With that in mind, real estate agents who work in the same office often enter into agreements to share their commissions on transactions that they work on as a team. While the idea of sharing efforts and commissions is appealing, such agreements and the process of actually splitting the commissions must be done correctly.

Recently the Court of Appeals decided a case that gives a good amount of guidance to agents and brokers who engage in cooperative agreements. Sanowicz v. Bacal (2015 WL 832093, at (2 Cal. Ct. App. Feb. 26, 2015) is the story of two Los Angeles area agents who found they had much in common and decided to combine their efforts. Sanowicz moved over to Bacal's broker, and they entered into written and oral agreements to share commissions. Later, Bacal left to work for another broker, and closed a high-dollar transaction that Sanowicz claimed was subject to a specific written split agreement. Bacal denied Sanowicz was entitled to any of that commission, and Sanowicz filed suit.

While there were a variety of claims within Sanowicz's suit, the primary law applied to the commission sharing agreement was Business and Professions Code Section 10137 ("B&P 10137"). The sides took different positions as to how to apply this statute, specifically the parts that make it illegal for a real estate salesperson to accept compensation from anyone other than his or her designated broker, or for a salesperson to pay another salesperson except through his or her designated broker.

Bacal's interpretation of the law was very broad, even going so far as to argue that the statute meant that agents could not even contract in their own names, and that the designated broker must be a party and a signatory to any sharing agreements. Bacal argued that because the broker here did not sign the agreement, it was invalid. The trial court agreed with Bacal and dismissed the claim.

On appeal, Sanowicz argued that B&P 10137 "does not apply to commission sharing agreements in and among the licensed broker and any licensed agents working for that broker, or between licensed real estate agents themselves – *so long as the restrictions on the manner of payment are maintained.*" The Court of Appeal agreed with Sanowicz, explaining that B&P 10137 was not as broadly interpreted as Bacal alleged, and that Bacal had missed the underlying point. The Court explained that there was nothing in the statute that made sharing agreements illegal, or requiring brokers to be part of such agreements. The primary and clear intent of the statute is to control and limit who is actually paying the commissions, and how that is done. As long as the commission is paid first to the broker, who then pays out the splits as the agents have agreed, the arrangement is fully permissible under the law. The case was sent back to the lower court for a full trial on these issues.

Continued...

There are a few important lessons that should be taken from this case:

- One of the things that this case should remind the real estate community of is that the laws that govern agents and brokers are primarily in place to protect the public. In this case, B&P 10137's underlying purpose is to prevent unlicensed persons or unsupervised agents from wrongfully participating in the real estate industry by denying them the means to get paid. Controlling the manner of payment of commissions is a very effective tool in doing this. In this case, since Bacal was trying to use the law for another purpose altogether (to avoid his obligations and deny another licensee payment under an enforceable contract), his argument failed. Courts are concerned with carrying out the will of the legislature when the purpose of a law is clear, and do not look kindly on litigants who try to make end-runs around those obvious purposes.
- While this case does focus on the idea that commission sharing agreements are acceptable without the broker's participation, this case did not resolve the issue for situations when the agents work for *different* brokers. Even though the facts here have the agents working for different brokers, the Court did not address the complication that some of you may have noticed: even though there was an agreement between the agents, how would Bacal's broker legally pay Sanowicz, who worked for a different broker, when B&P 10137 makes it clear that "[n]o real estate salesperson shall be employed by or accept compensation from any person other than the broker under whom he or she is at the time licensed"? [Italics added] This issue will need to be resolved during the trial phase.

It is apparent that Sanowicz convinced the Court of Appeals that Bacal's argument about brokers needing to sign sharing agreements was not correct. What Sanowicz has yet to show is how he should have been paid a commission from a broker that does not hold his license. Since the Court of Appeals remanded the case back to the Trial Court without resolving this issue, Sanowicz may have won the battle but may end up losing the war.

- This case should put brokers on notice that there may be significant holes in their Policy and Procedure ("P&P") Manuals when it comes to this issue. When new agents are hired, or come over from other brokers bringing their listings with them, it may be wise to have a policy that requires disclosure of any such sharing agreements where the agent might be a party. Further, brokers may want to make it clear that agents must indemnify brokers against liability that arises from these agreements. There are a number of possible approaches to revising P&P Manuals to protect brokers, but doing nothing is not one of them.

The ultimate lessons of the case are much more obvious. If you as an agent are going to agree with another agent who works for a common broker to share commissions, you can do that, just make sure that it is the broker who receives the commission and who pays out the splits. Secondly, make sure that your agreements are in writing, which is a universally good rule. Finally, honor your commitments and your contracts. Going to court is expensive, embarrassing and unnecessary in most cases.

Calendar

Brown Bag

Date: May 8, 2015

Time: 11:30 a.m. – 1:00 p.m.

Location: Southwest Riverside County Association of REALTORS®

Contact SRCAR for more info!

www.srcar.org

RPA

Date: June 9, 2015

Time: 9:00 a.m. – 1:00 p.m.

Location: Pacific West Association of REALTORS® - Long Beach

Contact PWR for more info!

www.pwr.net

Property Management

Date: June 25, 2015

Time: 9:00 a.m. – 1:00 p.m.

Location: Pacific West Association of REALTORS® - Anaheim

Contact PWR for more info!

www.pwr.net

This Newsletter is a copyrighted publication and may not be reproduced or transmitted in any form or by any means without written permission. This article does not necessarily reflect the point of view of The Giardinelli Law Group, APC, or other person or entity who publishes it. This article provides legal information abridged from statutes, court decisions, and administrative rulings and contains opinions of the writers. Legal information is not the same as legal advice, which is the application of law to an individual's specific circumstances. Although every effort is made to ensure the information is accurate and useful, it is recommended that you consult with a lawyer to obtain professional assurance that the information provided and your interpretation of it is appropriate for a particular situation. To request further information or to comment on this newsletter, contact us at (951) 244-1856 and visit our website at www.glawgroupapc.com.