

## Recent Appellate Division Case Highlights the Importance of a Well Drafted and Negotiated Broker's Commission Agreement

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The recent unpublished Appellate Division decision *DKNJ v. Reussi Capital* offers a warning for those real estate brokers who fail to properly document an agreement for a commission arising from the sale/purchase of real property. Diane Trugman, a licensed New Jersey real estate broker ("Trugman"), on behalf of her employer DKNJ Real Estate and Appraisal, LLC ("DKNJ") reached out to Peter Siegel ("Siegel"), who was managing member of Reussi Capital Limited Liability d/b/a Reussi Capital, LLC ("Reussi" or "Defendant"), to inquire whether his company was interested in purchasing a residential apartment complex located at 501-511 Lake Terrace located in Bradley Beach, New Jersey (the "Lake Terrace Property"). The Lake Terrace Property was not listed with any other real estate broker and it did not appear on the Multiple Listing Service ("MLS"). Defendant submitted a written offer to Trugman to purchase the Lake Terrace Property on May 4, 2018, and that same month Siegel sent her a text stating "and if I can make this work, I will pay you [sic] fee directly." On July 12, 2018, Trugman sent Defendant a broker's commission agreement setting forth a proposed commission of two percent (the "2% Proposal"). The next day, July 13, 2018, Siegel sent a counter offer proposing a flat commission of \$100,000 provided the purchase price did not exceed Five million dollars, which was signed by Siegel but not by Trugman.

Thereafter, there was an exchange of text messages as part of which Trugman requested return of the 2% proposal. While Siegel acknowledged that Trugman had made the initial introduction he claimed all other aspects of the transaction had been accomplished by him including negotiation and finalizing of the purchase terms. In February 2019, Siegel closed on the purchase of the property. On June 5, 2019, Plaintiff filed a complaint for payment of the commission. The trial court ultimately granted summary judgment dismissing the case, based in large part on the fact that there was no written agreement, which is required in New Jersey under the Statute of Frauds.



On Appeal, the Court focused on the fact that there was no writing which complied with the pertinent sections of the Statute of Frauds which require:

- b. Except as provided in subsection d. of this section, a real estate broker who acts as agent or broker on behalf of a principal for the transfer of an interest in real estate. . . is entitled to a commission only if before or after the transfer the authority of the broker is given or recognized in a writing signed by the principal or the principal's

authorized agent, and the writing states either the amount or the rate of commission.

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d. A broker who acts pursuant to an oral agreement is entitled to a commission only if: (1) within five days after making the oral agreement and before the transfer or sale, the broker serves the principal with a written notice which states that its terms are those of the prior oral agreement including the rate or amount of commission to be paid.[N.J.S.A. 24:1-16.]

The Court then addressed a theory created by the Court to avoid an inequitable result – when the broker is the “efficient procuring (or producing cause)”. The efficient procuring cause doctrine requires that the broker establish “...that he she caused [the] customer to negotiate with the seller and that the transaction is later consummated through direct negotiations between the seller and the broker’s customer even though the seller accepts terms different from those expressed in the listing agreement.”<sup>1</sup> Mere introduction of buyer and seller is not sufficient. The Appellate Division opined that the Trial Court properly concluded that the requirements of the efficient procuring cause doctrine had not been established. In summary, a broker must be familiar with the pertinent Statute of Frauds sections to assure payment of a commission that has been properly earned.

If you would like more information regarding the pertinent Statute of Frauds sections, or if you would like a review of your broker’s commission agreement for compliance, the authors of this article would be happy to discuss with you in further detail.

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<sup>1</sup> *DKNJ* \* 18-19 quoting *Leadership Real Estate, Inc. v. Harper*, 271 N.J.Super. 152, 171 (Law Div. 1993).