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Ariella Gutman(L) and David B. Haber(R) founder of Haber Law. Courtesy photos.

\$75K Finders Fee Doesn't Breach Commission Agreement in Hotel Deal, South Florida Court Rules

"This case is a good lesson to clearly outline the scope of a contract and offer," said Ariella Gutman of Haber Law in Miami.

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Real Estate Reporter

A dispute between South Florida two real estate agencies over a commission agreement made its way to the Third District Court of Appeal, which found accepting a \$75,000 finder's fee did not breach a contract in a hotel deal.

The dispute, between Keller Williams Realty Premier Properties and Mandich Real Estate Advisors, demonstrates why "brokers need to keep their transactions separate," according to the prevailing attorney.

Ariella Gutman of Haber Law in Miami represented Mandich Real Estate Advisors with attorney David Haber, and said the court saw through how the appellant was trying to "conflate the prior agreement between the parties."

"I think they [brokers] need to be very careful about crossing their T's and dotting their I's because these deals are happening so quickly. They're trying to close quickly and there's so much competition, that things can get murky when they work with the same parties or are shopping for different properties," said Gutman. "This case is a good lesson to clearly outline the scope of a contract and offer."

Keller Williams appealed a ruling from Miami-Dade Circuit Judge Peter Lopez, who dismissed with prejudice its second amended complaint against Mandich Real Estate Advisors.

In 2017, licensed real estate agents Fred Afif and Louis Erice were employed by Keller Williams and George Smith, a Florida licensed real estate broker who was formerly affiliated with Miami New Realty and Multifamily Real Estate Group. They entered into a commission agreement where Afif

and Erice would find buyers for hotel properties, Smith would find the sellers, and then they'd split the commissions.

The agreement included a provision that said neither Keller Williams nor Smith could enter into a sales agreement or exclude the other out of commission. The agreement was about the River Park Hotel and Suites in Miami. Afif was the only broker involved in the negotiation between the buyer and seller, and the sale of the property did not close.

In 2018, Smith, acting as a broker, found another hotel for the buyers called the Sands Harbor Resort and Marina in Pompano Beach. Smith formed a new company called Mandich Real Estate Advisors and became a qualifying broker when it became a licensed brokerage. Smith and the buyers entered into an agreement and paid Smith a finders fee, not a commission, of \$75,000. No commission was agreed upon, and Smith was still affiliated with Multifamily Real Estate Group.

Afif, Erice and Keller Williams then sued Smith and Mandich for breach of the commission agreement, civil conspiracy and sought damages for the Sands Harbor sale.

According to the opinion, they alleged that Mandich had assumed the obligations of the commission agreement after accepting Smith as its director and broker. They also claimed Mandich breached the non-circumvent provision by excluding the other parties from sale negotiations and the broker's fee agreement.

Eventually, Afif and Erice were voluntarily dropped as parties, leaving Keller Williams as the sole plaintiff. The trial court dismissed the breach-of-contract count against Mandich with prejudice because Mandich was not a party in the commission agreement. The court also dismissed the civil conspiracy count without prejudice and with leave to amend.

Keller Williams filed a second amended complaint against Mandich for tortious interference with a contractual or business relationship and civil conspiracy, but the trial court dismissed that with prejudice.

'Passively Accepting' Finder's Fee Isn't Civil Conspiracy

Third DCA Judge Eric Hendon wrote the ruling, which was backed by Judges Thomas Logue and Fleur Lobree. The panel found that Keller Williams failed to provide evidence for the claim of tortious interference of the commission agreement.

To prevail, the plaintiff had to prove the existence of a business relationship between Keller Williams and Smith; Mandich's knowledge of the relationship; that intentional interference of the relationship caused Smith to not fulfill his obligations under the agreement; and that damage to Keller Williams resulted in Smith's failure to perform.

"Smith's allegedly tortious acts cannot be imputed to Mandich, which entity was not a party to either the commission agreement or the broker's fee agreement. Mandich cannot be found liable for civil conspiracy merely by passively accepting a finder's fee," Hendon wrote.

With that, the Third DCA affirmed the trial court's dismissal with prejudice of the tortious interference and conspiracy counts against Mandich.

"We think the court got it right and we're happy about that," said Gutman. "So do our clients, who have to deal with these issues daily. I think they're happy going forward that they know that the court got it right."

Douglas Stein of Douglas H. Stein in Coral Gables represented Keller Williams Realty Premier Properties. He did not respond to a request for comment by deadline.

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David B. Haber

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