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Extell Sues to Get Its Commissions Back

Big developer sues to collect from several brokerage firms over advances it paid on sales that ultimately soured; cases center on The Lucida on the Upper East Side.

By **Amanda Fung**

Extell Development Co. is suing a number of brokerage firms for the return of what are known as advance commissions it paid on failed condo sales at its newest Upper East Side residential tower, The Lucida. In recent years it has become common to pay brokers half of their promised commission on a sale at the time of the contract signing, which can be years before the purchased unit has actually been completed.

The developer did not identify specific firms it is targeting, but according to recent court filings Extell has sued Brown Harris Stevens for \$48,480, the advance commission given to the firm for the sale of a \$3.2 million condo at 20-story new property in 2007. The actual sale of the apartment was not expected to occur until two years after the contract was signed, but at the last minute the buyer decided not to go ahead with the purchase, the filing said.

"Commissions are only earned when a unit closes," Extell said in a statement. "Since the unit for which Brown Harris Stevens received a commission did not close, Brown Harris Stevens did not earn the commission and it must be returned."

The developer said several other firms have returned the advanced commissions as soon as they were asked for the refund.

Asked about the pending lawsuit, Hall Willkie, president of Brown Harris Stevens, said he is confident that the court will make a wise decision. "They paid these commissions and our agreement didn't say it is refundable," he added.

The practice of paying advance commissions began during the boom years when developers were selling units before they were even completed, according to industry experts. The remainder of the commission was paid at closing. However, as a result of the downturn and falling condo prices, many buyers decided to walk away from their deposits, and a number of deals fell through.

According to StreetEasy.com, 75 of the 110 units at The Lucida have been sold so far. The units sold for an average of \$1,706 per square foot.

"Now developers are trying to get money on deals that defaulted," said Leonard Ritz, an attorney at law firm **Adam Leitman Bailey**. "Developers hate the idea of paying broker commission on deals that went bust."

Since there haven't been too many rulings regarding these cases it's unclear whether the Brown Harris or Extell will prevail. Earlier this year, the court ruled in favor of Extell and awarded the developer a refund on

Advance commissions paid to brokerage Sloane Square NYC for two failed apartment sale deals at The Lucida. Some note that that ruling may have no impact on this case, because Brown Harris is a larger firm with more resources.

While these commissions may seem small for a big developer to waste it's time with, Extell said "the amount at issue is not the point." So far, the developer has not sued brokerages for broken deals at its other new developments.