

In the Courts

July 2006

Ad firm sues for sublet space

Ground Zero Advertising, a California-based advertising group that enlisted CB Richard Ellis to find office space in New York, is now suing the commercial brokerage after they were unable to find subtenants for the space they leased.

The multimillion dollar case, which will be tried in New York Civil Supreme Court, revolves around claims that CBRE misrepresented its ability to sublet a building that Ground Zero leased.

The two parties began their relationship in 1999 when, according to Ground Zero (whose name is unrelated to the September 11 attacks), the company was looking to open a small office of 3,000 to 4,000 square feet in New York.

CBRE showed Ground Zero a 45,000-square-foot building at 430 West 14th Street that was available to only one lessee. Ground Zero claims CBRE assured them that it was an ideal space to sublet and CBRE knew of clients who would be interested. CBRE denies that it made any misrepresentations.

From September of 2000 to September of 2001, Ground Zero made renovations to the property under the impression that this would help secure subtenants. When, by September 2001, CBRE still had not produced any interested parties, Ground Zero breached their lease agreement because they could no longer afford the rent, according to court documents.

Ground Zero claims that it is owed millions of dollars in losses because it leased the building under the impression that CBRE would broker deals with parties interested in subletting a floor of the building. CBRE's lawyer, Joel Haims, claims that his client "didn't make those representations," and that the costs incurred by Ground Zero are their own responsibility.

Haims claims that "Ground Zero knew what they were doing" and that CBRE is not at fault.

The case is still in discovery, and although the matter is being handled in a New York court, an order was issued in May to allow witnesses to give depositions in California State Court.

Essex House commission flap

The owner of an apartment in the Essex House at 160 Central Park South is being sued by residential brokerage BP Vance for lost commission.

BP Vance claims that it is owed commission for a deal it brokered between David Tamir, who was selling the property, and a buyer brought to him by BP Vance.

In June 2005, the deal fell through after Tamir rescinded his acceptance of an offer brought to him by BP Vance, which was for the full asking price of \$2.55 million, according to court documents.

BP Vance believes that it is entitled to \$76,500, the commission it would have earned had the deal gone through at \$2.55 million.

Adam Leitman Bailey, attorney for BP Vance, believes that the law is on his side, despite not having a written agreement for the sale of the apartment.

According to Bailey, the law generally requires written agreements, but one exception is that brokers can enter into binding oral agreements with sellers about commission.

Although an oral agreement between a buyer and a seller would not be legally binding, an oral agreement between the seller and a broker is, Bailey maintained.

In addition, Bailey argues, a broker who presents the seller with a ready, willing and able buyer on the seller's terms has earned commission.

Last month, out of concern that Tamir would leave the country for Israel, attorneys for BP Vance argued a motion to require Tamir to put \$76,000 in escrow if Tamir sells the apartment.

Tamir's lawyers declined to comment on the case.

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