



Civil Resolution Tribunal

Date Issued: November 28, 2018

File: SC-2018-001757

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sutton West Coast Realty v. Rihela*, 2018 BCCRT 770

B E T W E E N :

Sutton West Coast Realty

APPLICANT

A N D :

Harry Rihela

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Volk

INTRODUCTION

1. The applicant, Sutton West Coast Realty, through its' agents, Karin White, and Jakob Lea, negotiated and completed an estate sale of a residential property in

Surrey. One of the sellers was the respondent, Harry Rihela. The applicant did not receive the full real estate commission because of an error. The applicant asks for \$2,730 for the underpayment of the commission, interest, and tribunal fees.

2. A lawyer, Alon Mizrahi, represented the applicant. The respondent represented himself.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize relationships between parties that may continue after the dispute resolution process has ended.
4. The tribunal may decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. I find that I can fairly resolve this dispute by writing based on the documents and written positions before me because there are no significant issues of credibility or other reasons that might require an oral hearing.
5. The tribunal may accept as evidence information that it considers relevant, necessary, and appropriate, whether the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. Under tribunal rule 126, in resolving this dispute, the tribunal may order a party to do or stop doing something; order a party to pay money; or order any other terms or conditions the tribunal considers appropriate.

ISSUE

7. Is the applicant entitled to \$2,730 for underpayment of the commission?

EVIDENCE AND ANALYSIS

8. The applicant bears the burden of proof on a balance of probabilities. I have commented upon the evidence and submissions only to the extent necessary to give context to these reasons.
9. In September 2017 the respondent and two other sellers jointly signed a multiple listing agreement with the applicant for the sale of a residential property in Surrey. The terms of that agreement are not in dispute.
10. It is undisputed that the sellers accepted an offer of \$260,000 for the property. The sale was to complete on October 30, 2017. Given the evidence before me and the lack of an argument to the contrary, I accept that there was a legally enforceable sale. That sale entitled the applicant to a commission under the multiple listing agreement.
11. I find that the commission on the sale was \$11,000. It is undisputed that \$5,060 of that commission was for the buyer's agent. That left \$5,940 for the applicant. Factoring in GST, the applicant was entitled to \$6,237.
12. I accept that the applicant did not receive \$6,237. It is undisputed that the applicant received \$3,507 because of a clerical error by the applicant. This error resulted in an underpayment to the applicant totaling \$2,730.
13. On December 1, 2017 the applicant told the respondent of the error and requested payment of the remaining commission. Payment was not received. Subsequent communication between the parties did not resolve the matter. It is undisputed that the respondent has not paid the applicant. I find that the respondent's failure to pay the rest of the commission was a breach of the agreement.

14. The respondent says that there is no evidence that he received the full proceeds of the sale. I infer that the respondent is saying that he should not have to pay the full underpayment because the proceeds of the sale were divided between him and one other seller. However, the respondent's requirement to pay the commission does not relate to the division of the sale proceeds.
15. The applicant may ask the respondent to pay the full commission based on the terms of the agreement. Under sections 5(A)(i) and 5(C) the respondent agreed to pay the applicant the commission, as calculated and set out above, plus applicable taxes if there was a legally enforceable contract for the sale while the agreement was in place.
16. The applicant provided the service agreed to. It is undisputed that the sale of the property happened while the agreement was in place. Once there was a legally enforceable sale the respondent's promise to pay the commission materialized. Stating an incorrect value for the commission during the transfer of the sale proceeds did not affect the applicant's right to the full commission.
17. As well, the presence of multiple sellers does not limit the respondent's obligation to pay the commission. The applicant may ask any of the sellers to make the full payment. It is then up to the respondent to collect any part owing to him from the other seller.
18. The respondent also says that the applicant was negligent. Specifically, the respondent says that the applicant was negligent in failing to: disclose facts in the multiple listing contract, file a power of attorney promptly, account for the sale proceeds, and provide information about the commission promptly. The respondent did not file a counter claim and does not provide details of the allegations. As a result, I am unable to assess the respondent's claims in negligence and have not considered them further.
19. In summary, I find that the agreement requires the respondent to pay the applicant the full commission. I order the respondent to pay the applicant \$2,730 for the

underpayment of the commission. Given my findings, I have not addressed the applicant's alternative argument of unjust enrichment.

20. Ordinarily interest is calculated from the date the agreement is not followed. Here, that is the date the sale completed. However, I accept that this sale happened during an emotionally distraught time for the respondent and that he did not know of the error at the time of completion having relied on the applicant. On balance, I have calculated the interest, under the *Court Order Interest Act* (COIA) from December 1, 2017 when the applicant told the respondent of the error and requested payment.
21. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule and award reimbursement of \$125.00 in tribunal fees, as claimed. The applicant did not claim dispute-related expenses.

ORDERS

22. I order that within 14 days of this decision, the respondent pay the applicant a total of \$2,889.24, broken down as:
 - a. \$2,730 for the underpayment of the commission,
 - b. \$34.24 in interest under the COIA, and
 - c. \$125 in tribunal fees.
23. The applicant is entitled to post-judgment interest, as applicable.
24. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The

time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

25. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Megan Volk, Tribunal Member