

REAL PROPERTY

BREACH OF CONTRACT

Real Estate Commission

SETTLEMENT: Defense.

CASE/NUMBER: Nathan J. Holden
v. Peter L. Glenister / RG07349520.

COURT/DATE: Alameda Superior /
Oct. 30, 2009.

JUDGE: Hon. Lawrence J. Appel.

ATTORNEYS: Plaintiff - Nathan J.
Holden (Law Offices of Nathan J.
Holden, Oakland).

Defendant - Peter N. Brewer (Law
Offices of Peter N. Brewer, Palo
Alto).

TECHNICAL EXPERTS: Defendant
- Harold Justman, J.D., real estate
policy and procedures, San Mateo.

FACTS: Plaintiff Nathan J. Holden,
Esq., sued defendant Peter L.
Glenister regarding a real estate
commission.

PLAINTIFF'S CONTENTIONS:

The plaintiff contended that the defendant acted only as a mortgage broker and was to be paid only from the real estate commission received from the listing broker. The defendant did not successfully obtain a loan, and therefore should disgorge the commission he received.

DEFENDANT'S CONTENTIONS:

The defendant denied the compensation arrangement and contended that plaintiff holds no DRE license and cannot be compensated for services he allegedly performed that require a license.

Plaintiff initially claimed breach of an agreement to share Glenister's real estate commission with plaintiff. Later, the plaintiff switched to various tort theories alleging defendant's breach of duties as a real estate agent and mortgage broker. Later, the plaintiff again changed theories, alleging a the defendant entered into a different agreement to split the commission with plaintiff, who is not licensed by the Department of Real Estate.

The plaintiff's theories changed multiple times throughout the litigation. The defendant's defenses morphed as plaintiff changed his theories to support his claim.

DAMAGES: The plaintiff originally claimed \$20,250, later reduced to \$10,000.

SETTLEMENT DISCUSSIONS:

At no time were there meaningful settlement negotiations.

RESULT: After two years of litigation and one aborted trial, the plaintiff dismissed during the 21-day safe harbor period of 128.7 sanctions motion. The defendant moved for costs and the plaintiff disputed. The case settled with plaintiff paying \$5,000 to defendant.

FILING DATE: Oct. 3, 2007.