

# Commercial brokers sue for commissions

**BY GARY HOFFMAN**

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Commercial real estate brokers are missing out on commissions for property sales and multi-year leases - the bread and butter of their industry - according to recent lawsuits in Oakland County Circuit Court.

And the practice may be occurring more frequently in the high-risk, commission-driven commercial sector.

"The economy is doing this," said David Poirier, an attorney with the Southfield-based boutique law firm Young & Susser PC. That's because the failure to pay commissions in the \$60,000 range or even less, he said, sometimes can fatten lean real estate deals.

But it can be tricky for brokers to go to court to fix the situation, since legal fees can erode awards, and verdicts can hinge on contract language and any unique aspects of the case. In many instances, the broker will sue anyway, Poirier said.

"They are angry, and it is a matter of principle," he said, adding that a lawsuit often is worth the effort. "When we take a case, it is to win."

Cyrowski Commercial Real Estate of Clarkston sued two Michigan limited liability corporations and a partnership in 2004, charging that its brokers weren't paid commission for a new office and retail project on Lapeer Road, near Casemer Road.

The brokers, Carl Cyrowski and Bernard Leahy, won an arbitration settlement of \$40,000 in August. "It was nowhere near what we were looking for," Cyrowski said. But pursuing the suit was worth the effort, he said, both financially and as a matter of principle.

"It's often said that we are in the information business, and, just like attorneys, we often have to figure out how much information we need to give out to get the business, and then we have to make sure we get paid for the service that we offer."

In court filings, Cyrowski Commercial Real Estate argued that its brokerage agreement for a proposed 40,000-square-foot medical building qualified it for a commission when the deal evolved into a joint venture with a party that Cyrowski had brought to the table.

According to Cyrowski's court filings, "The owners ... then continued their discussions (and) either by design or otherwise, ultimately worked out the terms of a business relationship to own and finance the project without explaining the details to Cyrowski."

According to the brief, Orion Mall Associates LLC, the owner, did not inform Cyrowski Commercial when the agreement was reached. "This was done to avoid paying the commission and interest to which it was entitled," the filing said.

Orion Mall Associates, however, argued in its filings that "no agreement relative to the sale of the premises was ever accepted by the parties hereto, but rather plaintiff was retained for the

exclusive purpose of securing leases.”

Orion Mall Associates argued that Cyrowski did not obtain leases during the period of the contract. In another case, Grubb & Ellis sued Griswold Properties LLC in Oakland County Circuit Court, charging that the landlord deprived the Southfield-based brokerage of a commission after it linked H&R Block with the Dime Building in downtown Detroit in 2001.

H&R Block signed a lease for 100,000 square feet of space on seven floors.

According to Grubb & Ellis's complaint, Grubb and the owner had signed a letter agreement in early 2001 that stipulated that the brokerage receive a 5 percent annual commission on the lease. However, the deal concluded that same year without a commission payment to Grubb, the complaint said.

A jury in 2004 awarded more than \$888,000 to Grubb & Ellis.

Another case pits Friedman Real Estate Group in Farmington Hills against 325 Woodward LLC, the former owner of the Peabody Mansion in Birmingham. Friedman is alleging non-payment of a commission relating to a three-year extension of a 6,000-square-foot lease at the mansion at 325 Old Woodward Ave.

According to court documents, Friedman and broker Robert Moon are owed at least \$25,000 as the commission on the lease extension at Peabody Mansion.

A representative of 325 Woodward LLC could not be reached for comment.

The mansion, in a separate deal, was bought for \$3.9 million in November 2004 by advertising icon Marcie Brogan.

Such cases suggest that the legal landscape is fraught with potential difficulties for brokers. According to Poirier, they shouldn't expect protections that are not included in their contract with the tenant or landlord.

Disputes can arise because brokers and the clients disagree about whether the contract is still in effect when the deal is concluded. "The big thing is the duration," he said.

The risks are especially high for a tenant representative. A broker might have brought a corporate client and a large building together, but the details of a deal are quickly turned over to the client's attorneys and in-house staff. As a result, the broker may be left out of the picture for months.

In Michigan, brokers must give careful thought to the question of whether they can afford to sue. Poirier said the state's courts often don't award attorney's fees, making losing especially expensive.

By the same token, clients deny a broker a commission at their own financial peril, Poirer said. "The landlord is incurring legal costs as well," he said, meaning the client could wind up paying both the award and its own legal bills.

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