



VOICEMAIL VINDICATION

THE FACTS

Commercial real estate agent, Dana Smith, was hired by Justin Brown to list his commercial building. Days after the listing was posted, she received a contract offer to purchase the property. When Dana contacted Justin to discuss the terms of the offer, he told her he was very busy with another business transaction and would give her authorization to sign the offer on his behalf as long as the purchase price would net him \$500,000.¹

After she examined the offer and determined the seller's profit would be in excess of \$500,000, she signed the contract on Justin's behalf and forwarded it to the buyer. Dana was not aware that a longtime tenant of the building, ABC Consulting, was also interested in purchasing the property and had a first right of refusal clause in their lease. When the owner of ABC Consulting was made aware of the sale, he immediately offered to purchase the commercial building at the same terms as the other buyer.² Justin, however, claimed the tenant's only right was that they be notified of any offer to purchase the property within 10 days. Justin then claimed Dana had no right to sign the contract offer on his behalf. As a result, both potential buyers rescinded their offers. Justin sued Dana for breach of brokerage agreement, negligence and attorney's fees.

THE RESULT

Fortunately, Dana saved a voicemail from Justin where he verbally gave her permission to sign the contract offer on his behalf. Had Dana not had this evidence, the cost of the claim could have been in the six figure range.

The claim was dismissed; however, there was still a cost involved in defending her claim. Dana's E&O insurance company ultimately paid out \$25,000 to cover attorney's expenses.

RISK FACTOR #1

Dana did not have written permission from her client to sign a contract on his behalf. A good risk management practice would be to have the client provide written instructions when granting a real estate professional authorization to sign contracts on the client's behalf.

RISK FACTOR #2

Dana was not aware of the details of the lease between Justin and ABC Consulting. When taking on a listing, an agent should know all the details of any current occupancy of a property including lease terms. Dana should have reviewed all current leases to determine the impact on the listing and sale of the property.

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