The Legal Pulse

First Quarter 2014

May 2, 2014

Welcome to the *Legal Pulse Newsletter*, where law and statistics come together to keep you informed on real estate liability trends. In this edition of the *Legal Pulse*, we examine three areas where licensees can face liability – agency, property condition disclosures, and RESPA. We also review some employment issues that can cause legal problems.

For both agency and property condition disclosure, a clear theme emerged: the need for due diligence before closing. Due diligence failures caused liability in several cases involving fiduciary duty, misrepresentation or fraud. On the other hand, due diligence was raised as a defense to liability in some instances.

In RESPA cases this year, the courts have been focusing on kickback claims. A common allegation is that insurance premiums are being used to camouflage payments for referrals. Other techniques also received scrutiny, as in one case where a "marketing fee" paid to the lender by an overnight express delivery vendor could have been a kickback for using the delivery service. Another trend: courts are giving plaintiffs longer to bring their claims. If a plaintiff could not discover their claim during the time allowed, courts are letting their cases go forward anyway. This type of decision means that cases where liability would have been barred might now proceed against licensees.

Details for significant new cases and authorities entered during the first quarter of this year are set forth below. In addition, tables at the end of this edition show how many overall cases appeared for major topic areas so far this year, and statistics regarding how liability was decided in finalized cases.

I. AGENCY HIGHLIGHTS: FIRST QUARTER 2014

A. Cases

- *Saffie*.[1] The plaintiff bought undeveloped property in California believing it was possible to build on it; his broker told him it was "ready to build." The MLS listing stated: "This parcel is in an earthquake study zone but has had a Fault Hazard Investigation completed and has been declared buildable by the investigating licensed geologist. Report available for serious buyers." The seller provided an outdated geological report, which the buyer's broker gave to the buyer without reviewing it. After closing, the plaintiff discovered that the property would need significant changes that made the planned building unfeasible, as the county had made changes to its requirements since the preparation of the original report. He sued the seller, the seller's broker and his own broker alleging breach of fiduciary duty and misrepresentation claims against both brokers for not disclosing the presence of the fault hazard zone. After a bench trial, the court determined that the buyer's broker had not undertaken adequate due diligence about the report before the closing and so awarded $232,147.50 against the buyer's broker. The court determined that the seller's broker was not liable because the MLS listing was not inaccurate, and also the seller's broker had given the buyer the original report, which should have alerted the buyer that additional due diligence was required. The buyer only appealed the ruling in favor of the seller's broker, and this ruling was affirmed on appeal.

- *9826 LFRCA, LLC*.[2] This case involves beach access from an architecturally significant property on the coast of California, the "Razor Residence," designed by Wallace Cunningham. The buyer believed from the MLS listing and other marketing materials that the property had a private right of access to the beach and that he paid more as a result. In fact, the access was only a "fully revocable license" from the University of California at San Diego. The buyer sued the listing broker and the listing broker in turn sued the buyer's representative, contending that the buyer's representative failed to do due diligence, which would have detected the true nature of the right of access. The listing broker also sued the assignor of the purchase agreement (who was legally related to the plaintiff). Upon the assignor's motion to dismiss, the trial court concluded it had jurisdiction over the assignor of the purchase agreement. The case is still in its early stages.

- *Hubbard Family Trust*.[3] The plaintiffs bought a lakeshore house that was settling and the soil around it was slowly sliding down a hill toward the lake. A prospective buyer gave

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[1] *Saffie v. Schmeling*, 224 Cal. App. 4th 563, 168 Cal. Rptr. 3d 766 (2014).

[2] *9826 LFRCA, LLC v. Hurwitz*, No. 13 cv 1042L(JMA), 2014 WL 925457 (S.D. Cal. Mar. 10, 2014).

[3] *Hubbard Family Trust v. TNT Land Holdings, LLC*, 2014-Ohio-772, 2014 WL 858363 (Ct. App. Feb. 25, 2014).

the broker a "contingency addendum" and asked for a price reduction after an inspection revealed settling in several places, condensation around the windows in a turret, and other signs of structural damage. The seller declined the reduced offer. The plaintiffs looked at the house while repairs of the various defects pointed out in the contingency addendum were being done, but the inspection did not discover the true problem with the house. The listing agent also represented the buyer, contending that repairs were intended to conceal the structural issues. The plaintiffs sued the seller for fraud, negligent misrepresentation and related claims, contending that the repairs were intended to conceal the structural issues. They also sued the broker for breach of fiduciary duty and negligence. A jury returned a verdict for the buyer and awarded damages on the claims against the seller. It also found the broker liable on the breach of fiduciary duty and negligence claims, but did not award damages. On appeal, the court concluded that although the purchase agreement had an "as is" clause, the broker's knowledge of the settling issues set forth in the prior buyer's contingency addendum gave rise to a duty to disclose them, and the vague information she provided was insufficient to meet her fiduciary duty to the buyers. The case was sent back to the trial court so damages could be determined on the breach of fiduciary duty and negligence claims against the broker.

- *Woodson*.[4] In *Woodson*, prospective buyers sued the seller, the seller's broker, and an agent for the seller's broker for fraud and misrepresentation because the sellers accepted a competing offer. The Woodsons and seller exchanged offers, and after the last exchange, the Mr. Woodson called the seller's agent and stated that he had forgotten to include a term relating to a "tap fee" for water and sewer service. The agent was not sure that the seller would accept that change to the offer. She later called the buyer and stated that the seller agreed to the change and instructed the buyer to note and initial the change and deliver the offer to her with an earnest-money payment. The agent received the change and the payment on a Saturday, but because the seller was not available to initial the change, the change was not immediately accepted. The parties agreed to meet on Monday to finalize the agreement. In the meantime, however, another buyer made an offer to buy the property for cash with an earlier closing date. The seller instructed the agent not to inform the Woodsons about the competing offer. On Wednesday, the seller accepted the competing offer. The Woodsons claimed the broker and agent had a duty to communicate truthful information and breached that duty by failing to disclose the existence of the competing offer and the fact that the seller had not signed the Woodsons' offer. This alleged duty was based on a statute requiring a seller's broker to treat prospective buyers honestly, giving them a right to put their trust and confidence in the broker and agent.[5] The court concluded that the buyers were not "clients" of the broker and agent and the Woodsons' dealings with the seller's broker and agent did not imply a relationship of "trust and confidence" that would require the disclosure of the competing offer.

[4] *Woodson v. DLI Props., LLC*, 406 S.C. 517, 753 S.E.2d 428 (2014).

[5] *Id.*, 753 S.E.2d at 434 (citing S.C. Code Ann. § 40-57-137 (2011); *Jacobson v. Yaschik*, 249 S.C. 577, 585, 155 S.E.2d 601, 605 (1967)).

- *Lerner*.[6] In *Lerner*, the buyers learned that they had moved in next to a Level 1 sex offender and sued the listing broker, who acted as a dual agent, and the sellers. The trial court dismissed the complaint. The appellate court affirmed the dismissal of the broker, but reversed in part with respect to the sellers. The appellate court determined that the broker's fiduciary duty could be, and was, limited by contract; the purchase agreement specifically stated that under Arizona's stigmatized property law,[7] the broker was not required to disclose that the property was in the vicinity of a sex offender. Further, although the Arizona statute also excused the sellers from an obligation to disclose the sex offender, the court concluded that a claim of fraud could proceed against them because the sellers allegedly told the buyers that they were moving to be closer to friends, when, in fact, they wanted to move away from the sex offender.

B. Statutes and Regulations

- Wyoming has modified a statute relating to in-house real estate transactions.[8] Previously, a real estate company could designate a licensee to handle in-house transactions if the licensee was directly supervised by a responsible broker and the responsible broker was not a party to the transaction or a transaction manager. The amendment provides that the designated licensee must be under the direct supervision of either (1) the responsible broker, who is not a party to the transaction; or (2) a transaction manager.

- Maryland's Real Estate Commission and Commissioner of Financial Regulation have issued *Guidelines for Real Estate Licensees in Real Estate Transactions*.[9] The Guidelines state that Maryland licensees must comply with Maryland's Mortgage Relief Assistance Act ("Maryland MARS") for activities that are beyond the scope of the real estate licensing act. Specifically, compliance with Maryland MARS is required if the licensee (1) collects money from a short-sale owner beyond his or her real-estate commission; (2) helps an owner avoid a foreclosure proceeding (*e.g.*, negotiates with the owner's lender or lienholder to obtain approval for a short sale, release of the lien, modifying the note, the waiver of the deficiency between the note and the short-sale price); (3) provides advice to an owner about stopping a foreclosure, obtaining a short sale; and (4) predicts the outcome of a short sale. The Guidelines also set forth the activities that do not violate Maryland MARS, even when done in the context of a possible short sale. Finally, the Guidelines set forth three tasks a licensee must do:

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[6] *Lerner v. DMB Realty, LLC*, No. 1 CA-CV 11-0339, 2014 WL 560922 (Ariz. Ct. App. Feb. 13, 2014).

[7] *See* Ariz. Rev. Stat. § 32-2156 (bars liability against transferor or licensee who does not disclose presence of a sex offender in the vicinity of property).

[8] Wyo. Stat. Ann. § 38-28-302(h) (2014) (Ch. 118; SF 80).

[9] Md. Real Estate Comm'n & Md. Comm'r of Fin. Reg., *Guidelines for Real Estate Licensees in Real Estate Transaction* (Aug. 29, 2013).

- refer the seller to a tax advisor to explain the tax consequences of a short sale;
- refer the seller to a housing counselor to discuss alternatives to foreclosure; and
- inform the seller if the lender or mortgage servicer requests a reduction in the licensee's commission (these requests are to be referred to the licensee's broker).

C. Volume of Materials Retrieved

Agency issues were identified thirteen times in eight cases. (*See* Table 1.) (Some cases addressed more than one Agency issue.) Most of the cases addressed Breach of Fiduciary Duty. This result is consistent with the prior updates. Dual Agency, Buyer Representation and Agency: Other were also addressed in the case law. (*See* Table 2.) One statute and one regulatory guidance addressing Agency issues were retrieved.[10] (*See* Table 2.) These items addressed Designated Agency and Agency: Other (*i.e.*, what a licensee may do and must do when the licensee is involved in a short sale).

II. PROPERTY CONDITION DISCLOSURE HIGLIGHTS: FIRST QUARTER 2014

A. Cases

- *Etelson*.[11] Condominiums on the top floors of a high-rise building overlooking the Hudson River were marketed as having spectacular views of the Manhattan skyline. None of the marketing materials or the model or painting in the developer's office disclosed that the developers planned to build an additional high-rise that would block the view. The marketing materials stated that the painting was an "artist's impression" and was not necessarily accurate. The real estate agents who worked for the defendants and showed the properties did not disclose the plan to build another building; they testified at trial that they did not know about the plan. The plaintiffs, who had bought condos on the

[10] This update covers the 2014 legislative sessions for the states in Group I. The Group I states are: Arizona, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Maryland, Mississippi, Montana, New Mexico, North Dakota, South Dakota, Utah, Virginia, Washington, West Virginia, and Wyoming. Two states, Montana and North Dakota, do not meet in even-numbered years. The update also covers the end of the 2013 sessions for the legislatures in "Group IV." Group IV includes: California, District of Columbia, Illinois, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin. Group IV also includes the territories of Guam, Puerto Rico, and the U.S. Virgin Islands.

[11] *Etelson v. Shore Club S. Urban Renewal, L.L.C.*, A-0570-11T4, 2014 WL 901942 (N.J. Super Ct. App. Div. Mar. 10, 2014).

upper floors for a significantly higher price, sued the developer and related entities alleging common-law and statutory fraud and other claims. They recovered a verdict of $4,817,638.12, which represented the total of the plaintiffs' purchase prices (trebled under New Jersey's consumer fraud act), prejudgment interest, and attorneys' fees. The verdict was affirmed on appeal.

- *Boulder Skies.*[12] In *Boulder Skies,* the broker owned both the property, which had an access easement (the "servient" property), and the property that benefitted from the easement (the "dominant" property). The broker sold the dominant property, believing that a road through a neighboring national forest provided access. He then built a house on what he thought was the servient property. As it turned out, the boundary line was not where the parties thought it was (there was a mistake on the original government section map and surveyors from the U.S. Forest Service later moved the property line). The house, its leach field, and a water tank were mistakenly built on the dominant property. Further, the forest road access, though it was on the map, was impassable. Serious disruptions arose between the seller/broker and the buyer and the buyer sued. The court concluded that the broker did not owe the buyer any duty merely by being an adjoining landowner. The broker's duty arose from his status as a real estate broker, and that duty was restricted by the terms of the purchase agreement.

- *Zhu*.[13] The Zhus bought a house that had 755 square feet less than had been represented to them by their agent. The agent had relied on the representations of the listing broker. The Zhus sued their agent for breach of fiduciary duty and misrepresentation. Zhu remarked during the showing that the space seemed smaller than the square footage stated, but the buyers' agent restated the wrong square footage and explained that it seemed smaller because the house had an open floor plan. The trial court granted the agent's motion for summary judgment because there was no evidence that the agent knew the actual square footage and was not required to measure or investigate the square footage. The court also pointed out that the buyers were not able to prove that they suffered any compensable damage. The ruling was affirmed on appeal.

- *Hubbard Family Trust*.[14] Discussed in Agency section above.

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[12] *Boulder Skies Ltd. P'ship v. Prazma*, No. D061973, 2014 WL 1087875 (Cal. Ct. App. Mar. 30, 2014). *See also* *Kloster v. Roberts*, No. 30546-5-III, 2014 WL 470742 (Wash. Ct. App. Feb. 6, 2014) (after buying property and being denied use of neighbors' driveway, plaintiffs learned it would cost $20,000 to build an alternate access to the property; not all of the neighbors agreed to sign the plat map to dedicate part of the land for a driveway; no liability for sellers' broker because the broker did not make any representations about access and the buyers should have investigated the situation more thoroughly).

[13] *Zhu v. Lam*, No. 14-13-00368-CV, 2014 WL 1028485 (Tex. App.–Houston [14th Dist.] Mar. 18, n.w.h.).

[14] *Hubbard Family Trust v. TNT Land Holdings, LLC*, 2014-Ohio-772, 2014 WL 858363 (Ct. App. Feb. 25, 2014).

- *Saffie.*[15] Discussed in Agency section above.

- *9826 LFRCA, LLC.*[16] Discussed in Agency section above.

B. Statutes and Regulations

- Indiana has modified its property condition disclosure form to require disclosure of methamphetamine production or dumping the waste products of methamphetamine production on the property.[17]

- Pennsylvania has enacted the Carbon Monoxide Alarm Standards Act, a provision of which requires the seller of a residential property to disclose information as to whether carbon monoxide detectors have been installed on the property.[18]

C. Volume of Materials Retrieved

Property Condition Disclosure Issues were identified eighteen times in twelve cases. (*See* Table 1.) (Some cases addressed more than one Property Condition Disclosure issue.) Most of the cases addressed Boundary issues, which includes disputes over square footage, easements, and similar situations involving the size of the property or its rights. Other issues addressed more than once include Structural Defects, Off-site Adverse Conditions, Pollution/Environmental Other, and Property Condition Disclosure: Other. (*See* Table 2.) One statute and one regulation addressing Property Condition Disclosure Issues were retrieved.[19]

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[15] *Saffie v. Schmeling*, 224 Cal. App. 4th 563, 168 Cal. Rptr. 3d 766 (2014)

[16] *9826 LFRCA, LLC v. Hurwitz*, No. 13 cv 1042L(JMA), 2014 WL 925457 (S.D. Cal. Mar. 10, 2014).

[17] Ind. Code § 31-21-5-7(2) (2014) (Pub. Law 180, § 5; HEA 1141).

[18] Penn. Pub. Acts ch. 121, § 4 (2013) (SB 607) (not yet codified).

[19] *See* note 10, above, regarding the coverage of this update.

III. RESPA HIGHLIGHTS: FIRST QUARTER 2014

A. Cases

- *Commonwealth Land Title Ins. Co.*[20] *Commonwealth Land Title* was an enforcement action by the Indiana insurance commissioner against a title insurer. The commissioner concluded that the insurer violated state insurance statutes by charging excessive rates and unfairly discriminated in setting premiums, because premium rates were determined by individual insurance agents and were not specifically tied to risk involved. The commissioner also concluded that the insurer failed to comply with RESPA disclosure requirements for the HUD-1 statement. The appellate court affirmed the commissioner's finding of liability and its order to take curative action.

- *Henson.*[21] A federal district court in California permitted a RESPA § 8 claim to go forward. Section 8 prohibits kickbacks and fee-splitting. The plaintiffs alleged that certain "marketing fees" from overnight express delivery services to a subsidiary of the title defendant were in fact an illegal fee split. The payments varied based on the volume of business referred. The defendants argued that the express services were not in the real-estate business and thus RESPA and Regulation X did not apply. After ruling that one of the plaintiffs' claims was not barred by the statute of limitations, the district court concluded that the term "settlement service" as used in Regulation X included overnight delivery service. It noted that Congress had not provided an exemption in RESPA for overnight delivery services, and asserted that courts should not add one on their own. The defendants also argued that the fees were not "unearned" because a service was in fact provided. The district court granted the defendants' summary judgment on plaintiffs' allegations relating to unearned fees, but denied summary judgment on the fee split.

- *Menichino*.[22] In *Menichino*, the plaintiffs filed Kickback claims after the one-year filing deadline. The complaint alleged that the mortgage insurer reinsured the risk through a subsidiary of the lender; that is, the risk the mortgage insurer was taking from the lender was insured by the lender's own insurance subsidiary, such that the risk of loss was passed back to the lender through its subsidiary. The plaintiffs contended that the reinsurance premiums from the mortgage insurer to the lender's subsidiary were actually

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[20] *Commonwealth Land Title Ins. Co. v. Robertson*, 5 N.E.3d 394 (Ind. Ct. App. 2014).

[21] *Henson v. Fidelity Nat'l Fin. Inc.*, No. 2:14-cv-01240-ODW(RZx), 2014 WL 1246222 (C.D. Cal. Mar. 21, 2014).

[22] *Menichino v. Citibank*, No. 2:12-cv-00058, 2014 WL 462622 (W.D. Pa. Feb. 5, 2014). *See also* *Manners v. Fifth Third Bank*, No. 2:12-cv-00442, 2014 WL 465701 (W.D. Pa. Feb. 5, 2014) (similar case); *Cunningham v. M&T Bank Corp.*, No. 1:12-cv-1238, 2014 WL 131652 (M.D. Pa. Jan. 14, 2014) (case alleged reinsurance scheme in exchange for referrals and plaintiffs asserted their claims should proceed even if they were filed late; court denied defendants' request for stay while case raising same issue was on appeal).

kickbacks for a steady stream of referrals. Because the plaintiffs' complaint set forth facts explaining why they failed to file on time, the court allowed the case to go forward under the doctrine of equitable tolling.

- *Baehr*.[23] Equitable tolling of the statute of limitations was also addressed in *Baehr*. The plaintiffs sued several defendants, including a national real-estate broker and one of its local agencies, alleging a kickback scheme for title-insurance referrals amounting to $500,000 over a thirteen-year period. The claim against the national broker was dismissed because it did not participate in the scheme and could not be held vicariously liable for the local agency's conduct. The local agency also sought dismissal of the case, but the district court denied the motion, concluding that the plaintiffs had set forth sufficient facts in their complaint to excuse the failure to file within one year of the settlement.

- *Prudential Locations.*[24] After people complained to the Department of Housing and Urban Development about Prudential Location's real-estate settlement practices, Prudential Location made a Freedom of Information Act (FOIA) request to compel HUD to produce information about the people who made complaints, including their names. HUD contended it could redact identifying information from documents being produced pursuant to a privacy exemption in FOIA. The federal district court agreed, but a three-judge panel the United States Court of Appeals for the Ninth Circuit reversed. HUD sought a rehearing before the entire panel of appellate judges. The panel concluded that requiring disclosure of the identifying information was an "unwarranted invasion of privacy" under the FOIA exemption and reinstated the district court's summary judgment for HUD.

B. Statutes and Regulations

No statutes or regulations addressing RESPA issues were retrieved.

C. Volume of Materials Retrieved

RESPA issues were identified eleven times in nine cases. (*See* Table 1.) (Some cases addressed more than one RESPA issue.) The research focused on claims arising as a result of the settlement process, not claims that arise in the context of foreclosure. Most cases addressed Kickback issues. (*See* Table 2.) No statutes or regulations addressing RESPA issues were retrieved.[25]

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[23] *Baehr v. Creig Northrop Team, P.C.*, No. WDQ-13-0933, 2014 WL 346635 (D. Md. Jan. 29, 2014).

[24] *Prudential Locations LLC v. U.S. Dep't of Hous. & Urb. Dev.*, 739 F.3d 424 (9th Cir. 2013).

[25] *See* note 10, above, for information regarding the coverage of this update.

IV. EMPLOYMENT HIGHLIGHTS: FIRST QUARTER 2014

A. Cases

- *Andrews.*[26] In *Andrews*, the plaintiff was a well-paid "nonselling broker" who worked at a Sotheby agency in Jackson Hole, Wyoming. His employment contract included a yearly bonus. The agency was sold and the new owner agreed to honor the contract at least through the end of that year. It did not pay the bonus at the end of the year and terminated the plaintiff about six months later. He alleged claims for breach of contract and a violation of the New York Labor Law with respect to his unpaid compensation. Sotheby, the predecessor broker, was dismissed from the case. The court also dismissed some claims against the successor broker, but the essential claims of breach of contract and the labor-law claim were allowed to go forward.

- *Lipnicki.*[27] *Lipnicki* raised issues relating to overtime pay and minimum wages. More than one hundred former salespeople sued for unpaid wages. The case addressed the "outside sales" exemption from the minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA). The case also addressed the good-faith defense to an FLSA claim, which states that the court may decline to award liquidated damages against an employer who misclassified employees as exempt from overtime and minimum wage requirements if the employer acted in good faith, and if the employer had reasonable grounds for believing that his or her act or omission was not in violation of the law. The opinion contains an extended discussion of opinion letters issued by the Department of Labor. The court declined to rule on the outside sales exemption before trial and concluded that the defendants could reargue the good-faith defense after trial if they were found liable under the FLSA.

- *Salter.*[28] In *Salter*, a real-estate agent and her broker had an employment agreement that could be terminated "for cause" or with 30 days' notice. The agent was abruptly terminated and the employer would not pay the commissions and wages she claimed were owed. She alleged a claim under the Massachusetts Wage Act and a claim of bad-faith termination. She also contended she was misclassified as an independent contractor. The court denied the defendant's motion for summary judgment, concluding that there was an issue of fact as to whether the plaintiff was terminated "for cause." If so, no commissions were owed; if not, commissions earned during the 30-day notice period may be due. The court also denied the defendant's motion on the bad-faith termination. The

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[26] *Andrews v. Sotheby Int'l Realty, Inc.*, No. 12 Civ. 8824 (RA), 2014 WL 626968 (S.D.N.Y. Feb. 18, 2014).

[27] *Lipnicki v. Meritage Homes Corp.*, No. 3:10-cv-605, 2014 WL 923524 (S.D. Tex. Feb. 2014).

[28] *Salter v. Lopez*, No. SUCV2012-01000-E, 31 Mass. L. Rptr. 610, 2013 WL 7121297 (Mass. Super. Ct. Oct. 28, 2013).

wage and hour claim was dismissed only with respect to the claim for unpaid salary under the Wage Act because the plaintiff did not actually work during the 30-day notice period and did not earn any salary.

B. Statutes and Regulations

Statues and regulations addressing Employment are not included in the *Legal Pulse*.

C. Volume of Materials Retrieved

Employment issues were identified six times in three cases. (*See* Table 1.) (Some cases addressed more than one Employment issue.) The Employment issue with the highest volume of cases is Wage and Hour Issues, followed by Wrongful Termination and Independent Contractors. (*See* Table 2.) Statues and regulations addressing Employment are not included in the *Legal Pulse*.

V. VERDICT AND LIABILITY INFORMATION

A. Agency Cases

Liability was determined in six Agency cases, and the licensee was found liable in three. (*See* Table 3.) Two of these cases ended with damages awards.[29]

B. Property Condition Disclosure Cases

Liability was determined in nine Property Condition Disclosure cases, but the licensee was found liable in only three. (*See* Table 3.) Two of those three cases resulted in an award of damages.[30]

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[29] *See* *Saffie v. Schmeling*, 224 Cal. App. 4th 563, 168 Cal. Rptr. 3d 766 (2014) (discussed in Agency section above; damages award of $232,147.60 affirmed); Kelly v. Smith, 2013-0280, 2014 WL 1369862 (La. Ct. App. 4th Cir. Feb. 16, 2014) (real-estate licensee—a former member of an LLC—acted as its leasing agent and allegedly mismanaged the LLC's money and that of the remaining member of the LLC; $46,413.50 was awarded on a breach of fiduciary duty claim); *Hubbard Family Trust v. TNT Land Holdings, LLC*, 2014-Ohio-772, 2014 WL 858363 (Ct. App. Feb. 25, 2014) (discussed in Agency section above; case remanded for new trial on damages only).

[30] *See* *Etelson v. Shore Club S. Urban Renewal, L.L.C.*, A-0570-11T4, 2014 WL 901942 (N.J. Super Ct. App. Div. Mar. 10, 2014) (discussed in Property Condition Disclosure section above; damages award of $4,817,638.12); *Saffie v. Schmeling*, 224 Cal. App. 4th 563, 168 Cal. Rptr. 3d 766 (2014) (discussed in Agency section above; damages award of $232,147.60); *Hubbard*

C. RESPA Cases

Liability was determined in three RESPA cases and liability was found in one of them. (*See* Table 3.)[31] No damages were awarded, however.

D. Employment Cases

None of the employment cases ended with a finding of liability. (*See* Table 3.)

Family Trust v. TNT Land Holdings, LLC, 2014-Ohio-772, 2014 WL 858363 (Ct. App. Feb. 25, 2014) (discussed in Agency section above; case remanded for new trial on damages only).

[31] *Commonwealth Land Title Ins. Co. v. Robertson*, No. 49A04-1302-PL-84, 2014 WL 847155 (Ind. Ct. App. Mar. 4, 2014) (discussed in RESPA section above; no damages were awarded).

Table 1
Volume of Items Retrieved for First Quarter 2014
by Major Topic

Major Topic	Cases	Statutes	Regulations
Agency	13	1	1
Property Condition Disclosure	18	2	0
RESPA	11	0	0
Employment	6	N/A	N/A

Table 2
Volume of Items Retrieved for First Quarter 2014 by Issue

Issue	Cases	Statutes	Regulations
Agency: Dual Agency	2	0	0
Agency: Buyer Representation	3	0	0
Agency: Designated Agency	0	1	0
Agency: Transactional/Nonagency	0	0	0
Agency: Subagency	0	0	0
Agency: Disclosure of Confid. Info.	0	0	0
Agency: Vicarious Liability	0	0	0
Agency: Breach of Fiduciary Duty	6	0	0
Agency: Disclosure of Financial Ability	0	0	0
Agency: Agency Disclosure	0	0	0
Agency: Minimum Service Agreements	0	0	0
Agency: Pre-listing Marketing of Properties	0	0	0
Agency: Other	2	0	1

Issue	Cases	Statutes	Regulations
PCD: Structural Defects	2	0	0
PCD: Sewer/Septic	1	0	0
PCD; Radon	0	0	0
PCD: Asbestos	0	0	0
PCD: Lead-based Paint	0	0	0
PCD: Mold and Water Intrusion	1	0	0
PCD: Roof	1	0	0
PCD: Synthetic Stucco	0	0	0
PCD: Flooring/Walls	1	0	0
PCD: Imported Drywall	0	0	0
PCD: Plumbing	0	0	0
PCD: HVAC	0	0	0
PCD: Electrical System	0	0	0
PCD: Valuation	0	0	0
PCD: Short Sales	0	0	0
PCD: REOs & Bank-owned Property	0	0	0
PCD: Insects/Vermin	0	0	0
PCD: Boundaries	5	0	0
PCD: Zoning	0	0	0
PCD: Off-site Adverse Conditions	2	0	0
PCD: Meth Labs	0	1	0
PCD: Stigmatized Property	0	0	0

Issue	Cases	Statutes	Regulations
PCD: Megan's Laws	1	0	0
PCD: Underground Storage Tanks	0	0	0
PCD: Electromagnetic Fields	0	0	0
PCD: Pollution/Env't'l Other	2	0	0
Property Condition Disclosure: Other	2	1	0
RESPA: Disclosure of Settlement Costs	1	0	0
RESPA: Kickbacks	8	0	0
RESPA: Affiliated Business Arrangements	0	0	0
RESPA: Other	2	0	0
Employment: Wrongful Termination	2	N/A	N/A
Employment: Personal Assistants	0	N/A	N/A
Employment: Independent Contractors	1	N/A	N/A
Employment: Wage & Hour Issues	3	N/A	N/A

Table 3
Liability Data for First Quarter 2014

Topic	Liable	Not Liable	% Liable	% Not Liable
Agency	3	3	50%	50%
Property Condition Disclosure	3	6	33%	67%
RESPA	1	2	33%	67%
Employment	0	0	0%	0%