STILL MORE EXPLAINING NEEDED

by W. Christopher Barrier
Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

Lawyers and realtors seem to be doomed to misunderstanding on the part of clients, who hear what they want to hear and disregard the rest, such as in the case of exclusive agency agreements.

In a recent New York case (Douglas Elliman LLC v. Treeter), summarized in the ABA Journal, a realtor was accused of creating a dual agency without the necessary consents and disclosures.

The owner of a cooperative unit (similar to a condominium, of course) entered into an exclusive agency agreement and accepted an offer, subject to approval by the co-op board. Meanwhile, the broker met with other prospective buyers at an open house and showed them other units, including another in the same building as the seller's.

Sorry, no deal…

The deal with the first buyer fell through, and the prospective buyers saw the seller's unit again, making an offer for slightly less than the asking price, with the broker reducing her commission from 6% to 5%.

The seller accepted the offer but later objected to paying any commission, arguing that, by showing the buyers other properties, the broker acted as a dual agent, but without having made full disclosure and obtaining the consent of the parties. The appellate court held that, as a matter of law, the broker did not act as a dual agent.

Duty-free Zone…

Absent an agreement with the seller to the contrary, a broker has no duty to refrain from showing prospective buyers other properties. The court thought that any other holding would unreasonably restrain brokers from cultivating potential clients at open houses for their principals.

The terminology and some of the regulatory and business terms may be peculiar to New York, but the principles and the words of caution are universal---that is, as is often the case, what seemed obvious to the court and the realtor was apparently not so clear to the unit owner. So watch your backside and be on the lookout for hints of clear misunderstanding.

CHRIS BARRIER practices real estate and business law with Mitchell Williams in Little Rock.