Stuck in the Middle

A Real Estate Agent's Nightmare

The Facts:

A real estate broker, Deborah, was having a very long dry spell. So when Cathleen, the owner of a large estate, enlisted her services, Deborah was excited. Deborah had previously received numerous inquiries about the estate, so she knew it was a great sales opportunity, even though it was in another state.

Since Cathleen was living in a remote area, she communicated with Deborah only by telephone. She had bought the home years ago as part of a larger investment portfolio, but after suffering a few financial setbacks she decided to sell the property.

Risk Factor #2
When clients are not local, agents should send and retrieve all necessary documentation. Time frames should be established to complete tasks, and be communicated to the buyer and seller (or the other party's agent or attorney if applicable). Agents should always advise clients to have all documentation reviewed by their attorneys, whether they meet the client in person or not.

Leads were few. After a month without any inquiries, Cathleen grew impatient with the lack of sales activity, especially since there was so much previous interest. Deborah worried that Cathleen would switch agents, so she increased her advertising but was still unable to generate interest.

Two more weeks passed when Jeff and Mary Higgins expressed interest in the property. Deborah arranged a viewing with Cathleen's permission. The Higgins were in search of a larger house with more land. Upon their visit they felt the view, size and the privacy were a perfect fit.

After difficult negotiations where offers were made and countered several times, Cathleen said she would agree to the last offer if Deborah would reduce her commission to bridge the difference. Since Deborah knew there were no other sales leads and that she would probably lose the listing if the sale fell through, she agreed to the reduction.

The next day, Cathleen pressed Deborah to sign the sales contract for her, saying she didn't have access to a fax machine and didn't want to delay the sale. Deborah reluctantly agreed.

Risk Factor #1
Agents should never agree to sign a sales contract. However, this situation happens more often than you may think because agents trust their clients, often without considering the professional liability risks. In this case, the agent weighed the client's request against the risk of losing a critical sale, but didn't consider what could happen if the sale fell through.

Four days later, Deborah got a call from Cathleen saying she was no longer able to sell the house and would refund the Higgins' deposit. Deborah felt her heart sink as Cathleen cut the conversation short. When Deborah called Mr. Higgins to explain the situation, he became outraged and refused to accept Cathleen's refund offer. The Higginses sued Cathleen, seeking specific performance under the contract. Cathleen filed a cross-claim against Deborah, alleging that she never agreed to the contract, and sought indemnification.

Risk Factor #3
Agents should never agree to enter into oral or written contracts on behalf of a client. All arrangements between buyer and seller should be made, agreed to and memorialized in legally enforceable written agreements signed by both parties.

The Result:

Litigation was messy! The Higgins' original demands exceeded $300,000. Deborah, having signed the contract without legal authority, was in a difficult position, especially since Cathleen insisted she never authorized Deborah to sign the contract. The case moved to mediation. After the complications of pursuing the sale were explained, Jeff and Mary reluctantly withdrew their demand in exchange for reimbursement of legal fees. To settle, Cathleen agreed to split these costs with Deborah. The combined defense and settlement costs incurred by Deborah's professional liability insurer exceeded $100,000.

* Names have been changed.

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