FILED
OCT 14 2010
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By:_____

NO. 29322-0
COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

WASHINGTON PROFESSIONAL REAL ESTATE, LLC,
d/b/a/ Prudential Almon Realty,

Appellant

vs.

DR. KIPP YOUNG, et ux.

Respondents.

APPELLANT'S BRIEF

ROBERT E. LAWRENCE-BERREY, JR.
and Finney, Falk, Lawrence-Berrey & Naught, PLLP
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P. O. Box 1586
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(509)453-5604
WSBA NO. 19703

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I. Introduction

This is a real estate commission dispute. The lower court heard cross-motions for summary judgment. The lower court held that Prudential Almon Realty (Prudential) was not entitled to a commission because Prudential was not the procuring cause of the sale. The undisputed evidence is that Prudential's sign in the Youngs' yard set in motion a series of events that culminated in the sale. Therefore, this court should reverse and direct the lower court to enter summary judgment for Prudential.

II. Assignments of Error

No. 1 The lower court erred by concluding as a matter of law that Prudential was not the procuring cause of the sale.

No. 2 The lower court erred in finding that Prudential's efforts were "less than minimal."

No. 3 The lower court erred by concluding as a matter of law that Prudential was not entitled to a commission pursuant to the terms of the listing agreement.

Issues Pertaining to Assignments of Error

1. Because the Prudential sign set in motion a series of events that culminated in the sale, as a matter of law, is Prudential entitled to a commission? (Assignment of Error No. 1).

2. Does the uncontested evidence show that Prudential put forth substantial efforts to sell the Youngs' residence? (Assignment of Error No. 2).

3. Because the listing agreement provides for a commission should a buyer's attention be brought to the property through the Prudential sign, is Prudential entitled to a commission pursuant to the terms of the listing agreement? (Assignment of Error No. 3).

III. Statement of the Case

A. The Listing Agreement:

The listing agreement is located in Appendix A. The pertinent parts are set forth below:

> 3. TERM OF AGREEMENT: [Prudential]'s employment and sole right to sell [610 Noble Hill] shall continue from the 7 day of May, 2008, until midnight of the 7 day of Nov., 2008 . . .

8. COMPENSATION TO BROKER: . . . [The Youngs] hereby agree[] to pay [Prudential] 6% of the purchase price . . . as compensation for Broker's services *at the time of closing* upon the occurrence of any action provided for in sections "a" or "f" below. . . .

   a. *If the property . . . is . . . sold . . . within 365 days after the expiration of this Agreement to any person . . . whose attention the Property was brought through the signs, advertising, or any other action or effort of a Broker or Broker's agents . . . then Seller shall pay Broker the above compensation. . . .*

14. ATTORNEY FEES: Should any dispute arise regarding the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney fees and costs, including those for appeals.

(CP 106-08, Italics added). On November 7, 2008, the parties extended the listing to December 31, 2008. (CP 117).

B. <u>Prudential's Efforts Toward Selling the Property</u>:

Prudential conducted two broker open houses and placed several ads during the listing period. (CP 102-04, ¶ 7). These efforts produced five offers from three potential purchasers.

(CP 102-03, ¶¶ 7 (C, I, M, P & Q)). The Youngs accepted the fifth offer, but the sale fell through after the home inspector reported a structural sag in the roof. (CP 103-04, ¶¶ Q & S).

C. Prudential's Sign Set in Motion a Series of Events that Culminated in the Sale:

In October of 2008, Dr. John Place was riding his motorcycle and saw a Prudential sign at 610 Noble Hill. (CP 204:18 - CP 205:4; & CP 215). His sister (Dr. Pat Eastman) and brother-in-law (Dr. Tom Eastman) were considering moving from Nebraska to Yakima, and Dr. Place thought that they might be interested in the property. (Id.) He therefore stopped and took an advertising flyer from the sign. (Id.) Dr. Place testified that he also noticed the sign in November and December of 2008 when he visited Bob Rockwell, a patient of his who lived next to the property. (CP 205:14 - CP 206:1). Dr. Place testified that he would not have known that 610 Noble Hill was for sale except for the Prudential sign on the

property. (CP 210:12-14).

In early December 2008, the Eastmans decided to move to Yakima. (CP 222:4-6). After Christmas 2008, the Eastmans hired Creekside Realty to help them find a new home. (CP 222:9-14). The Realtors who helped them were Sue Gifford and Patti Bemis. (CP 222:13 - CP 224:5).

On January 23rd, 2009, Sue Gifford and Patti Bemis were showing houses to Dr. Pat Eastman. (CP 223:15 - CP 224:17). With them was her brother, Dr. John Place. (CP 223:21- CP 224:2). Dr. Tom Eastman was still in Nebraska, and would not arrive in Yakima until the following day. (CP 223:21-22 & CP 226:4-5). After they looked at a house near 610 Noble Hill, Dr. Place recommended that they drive by 610 Noble Hill. (CP 224:21- CP 225:3). When they drove by the property they noticed that the Prudential sign was gone. (CP 209:6). Dr. Pat Eastman viewed the property from the neighbor's driveway and liked what she saw. (CP 225:3-17).

The next morning, the Eastmans and the Places saw Mrs. Rockwell outside of a Yakima café. (CP 226:1-2). The Places asked Mrs. Rockwell if she knew whether her neighbors' property might still be for sale. (CP 226:6-7). She did not know, but said that she would ask Dr. Young. (CP 226:8). Mrs. Rockwell called Dr. Young and asked whether he was still interested in selling his property. (CP 185:1-11). Dr. Young obtained the Eastmans' telephone number from Mrs. Rockwell, and called them to schedule a showing. (CP 185:14 - CP 186:11).

The Eastmans first went through the property on Sunday, January 25, 2009. (CP 226:12-17). They were without their Realtors because Dr. Young told them that he did not want Realtors involved. (CP 226:23 - CP 227:2). The Eastmans subsequently involved their Realtors because they were not comfortable with the buy-sell process and wanted assistance. (CP 227:8-18). The Eastmans and one of their Realtors then

went through the property on Wednesday, January 28, 2009. (CP 227:16 - CP 228:1).

The Eastmans reviewed the MLS listing information earlier prepared by Prudential. (CP 228:4-12 & CP 239). Using that information, the Eastmans made an offer that day. (CP 228:1-3 & CP 240-253). On February 2, 2009, the parties agreed upon $925,000. (CP 240, ¶6). Closing occurred on March 20, 2009 (CP 237:1-5), well within the 365 day window described in ¶8a of the listing agreement. (CP 107).

IV. Summary of Argument

If a party sets in motion a series of events culminating in a sale, the party is said to be the procuring cause of the sale. The following series of events are causally connected:

1. Prudential placed its sign on the property;
2. Dr. Place saw the sign on multiple occasions;
3. Because he had seen the Prudential sign, Dr. Place later suggested to his sister (Dr. Pat Eastman) and her Realtors that they drive by the property;

4. Although the Prudential sign was gone, Dr. Pat Eastman looked at the property and was interested in it;

5. The next day, the Places and the Eastmans saw Mrs. Rockwell, and asked whether her neighbor's property was still for sale;

6. Mrs. Rockwell did not know, so she called Dr. Young, who then called the Eastmans;

7. The Youngs showed the property to the Eastmans, who soon after purchased the property.

Because the Prudential sign set in motion the above series of events which culminated in the sale, Prudential was the procuring cause of the sale and is entitled to a commission.

V. Argument

A. Standard of Review: De Novo

An appellate court reviews a lower court's summary judgment de novo. *Michael v. Mosquera-Lacy*, 165 Wn.2d 595, 601, 200 P.3d 695. "Summary judgment is appropriate when 'there is no genuine issue as to any material fact and . . .

the moving party is entitled to a judgment as a matter of law.'" *Locke v. City of Seattle*, 162 Wn.2d 474, 483, 172 P.3d 705 (2007). When determining whether an issue of material facts exists, the court construes all facts and inferences in favor of the nonmoving party. *Reid v. Pierce County*, 136 Wn.2d 195, 201, 961 P.2d 333 (1998). A genuine issue of material fact exists only where reasonable minds could reach different conclusions. *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982).

B. Prudential's Efforts Were the Procuring Cause of the Sale

1. The listing agreement is consistent with a procuring cause analysis:

When the written contract provides for the manner in which sales commissions will be paid, the terms of the contract generally control. *Professionals 100 v. Prestige*, 80 Wn. App. 833, 837, 911 P.2d 1358 (1996). The listing agreement provides in relevant part:

> 3. TERM OF AGREEMENT: Broker's employment and sole right to sell shall continue from the 7 day of May, 2008, until midnight of the 7 day of Nov., 2008. . . .

8. COMPENSATION TO BROKER: . . . Seller hereby agrees to pay Broker 6% of the purchase price . . . as compensation for Broker's services at the time of closing or upon the occurrence of any action provided for in sections "a" or "f" below. . . .

> a. *If the property . . . is . . . sold . . . within 365 days after the expiration of this Agreement to any person . . . whose attention the Property was brought* ***through*** *the signs, advertising, or any other action or effort of a Broker [or] Broker's agents . . . then Seller shall pay Broker the above compensation.*

(Emphasis added).

Courts give undefined terms their plain, ordinary, and popular meaning, which may be ascertained by reference to standard English Dictionaries. *Wm. Dickson v. Pierce County,* 128 Wn. App. 488, 493, 116 P.3d 409 (2005) (citing *Queen City Farms v. Central Nat'l Ins.*, 126 Wn.2d 50, 77, 882 P.2d 703 (1994)). Webster's Dictionary defines "through" as meaning "because of." Dr. Young understood that he owed Prudential a commission if Prudential's efforts even *indirectly* resulted in the sale. (CP 191:3 & CP 196, ¶5).

Courts will apply a "procuring cause" analysis if the terms of the listing agreement are consistent with the concept of procuring cause. *Professionals 100 v. Prestige, supra*, 80 Wn. App., *supra,* at 837-38. Provided that this court agrees that procuring cause exists if a buyer learns of property because of the sign, the listing agreement is consistent with the concept of procuring cause. Otherwise, this court should hold that Prudential is entitled to a commission under the specific terms of the listing agreement. (See part V.D., *infra*).

2. This case is similar to *Professionals 100*, where the broker did not directly find the buyer, but the sale probably would not have occurred but for the broker's efforts:

In *Professionals 100 v. Prestige*, 80 Wn. App. 833, 911 P.2d 1358 (1996), Carey Erwin of Pro 100 entered into a commission split agreement with Kenneth Pottenger of Prestige Realty for the sale of two nursing homes. *Id.* at 836. The companies agreed to split the commission 50/50 on the closing of any transaction on which Mr. Erwin provided a buyer. *Id.*

Mr. Erwin contacted a Mr. McClay who contacted a Mr. Steensland, who had a connection with a potential buyer back east, Franciscan Eldercare. *Id.* Mr. Steensland contacted Mr. Pottenger (Prestige Realty) and told him that Franciscan Eldercare might be interested in the two nursing homes. *Id.* Mr. Steensland also provided Mr. Pottenger with a contact person for Franciscan Eldercare, a Mr. Wiley. *Id.* Mr. Pottenger then told Mr. Erwin (Pro 100) about Franciscan Eldercare and Mr. Wiley. *Id.* There were impediments to the sale which Mr. Erwin resolved through direct communication with Mr. Wiley. *(Id.,* at 840, ¶ 31). The sale of the two nursing homes closed. Had it not been for Mr. Erwin's efforts, the sale probably would not have closed. *(Id.*, at 841, ¶ 39). However, because Mr. Pottenger was unaware of Mr. Erwin's direct discussions with Mr. Wiley, Prestige Realty did not pay Mr. Erwin (Pro 100) half of Prestige Realty's $160,000 commission. (*Id.*, at 840-841, ¶ 34).

In that case, Mr. Erwin (Pro 100) did not directly find the buyer; rather, there were two individuals – Mr. McClay and Mr. Steensland – who were initially between Mr. Erwin and Franciscan Eldercare. (*Id.*, at 836). Regardless, both the trial court and the appellate court held that Mr. Erwin (Pro 100) was the procuring cause and entitled to a commission. (*Id.*, at 836, 842-43).

As shown by *Professionals 100*, a Realtor procures a buyer if he sets in motion a series of events which culminate in the sale. *The Realtor does not need to directly find the buyer, nor does the buyer need to learn of the property directly from the Realtor.* In *Professionals 100*, there were two persons between Mr. Erwin and Franciscan Eldercare. Here, there were two persons between Prudential and the Youngs'.

Also similar to *Professionals 100*, but for plaintiff's efforts, the sale probably would not have occurred. Dr. Place testified that had it not been for the Prudential sign, he would not have known that the property was for sale:

Q: . . . If there wasn't a Prudential sign back in 2008, would you have known that the property was for sale?

A: No.

(CP 210:12-14).

Because Prudential's efforts (the sign) set in motion a series of events that culminated in the sale, Prudential is the procuring cause of the sale and is entitled to a commission.

3. This case is distinguishable from *Roger Crane* and *Lloyd Hammerstad*, where the brokers' efforts had nothing to do with the sale:

In *Roger Crane & Assoc. v. Felice*, 74 Wn. App. 769, 875 P.2d 705 (1994), Mr. Felice had an exclusive listing agreement with Tomlinson South, Inc., to sell his Spokane home. The agreement provided for a 6% commission, and a commission split of 3% to a cooperating broker. Mr. Brooks, a Realtor with Roger Crane and Associates, had worked with the Chopots to locate a house for them. He learned that the Felice home was for sale and drove the Chopots past the home. The

Chopots were not interested in the home. Nevertheless, Mr. Brooks convinced them to view the inside once he obtained permission from the seller. But Mr. Brooks never did show them the home. Instead, Walt Wolfe, a mutual friend of Mr. Felice and the Chopots, called the Chopots and told them about the Felice home. The next day the Chopots saw the inside of the home and eventually made an offer which culminated in the sale. In that case, the trial and appellate courts concluded that Mr. Brooks was not the procuring cause of the sale.

Roger Crane is distinguishable. There, Mr. Brooks' efforts did not set in motion a series of events that culminated in the sale. Stated another way, there was *no* causation – none whatsoever – between Mr. Brooks' efforts and the sale.

In *Lloyd Hammerstad, Inc. v. Saunders*, 6 Wn. App. 633, 495 P.2d 349 (1972), plaintiff's agent (Fairy Ross) showed Dr. Ricker about 40 houses one day in June 1968. One of the houses was the Saunders' house. The agent said that the price of the Saunders' house was $59,500 (or $55,000), and Dr.

Ricker said he was not interested because the price was too high. In September of 1968, Mrs. Eaton, a friend of Mrs. Saunders, took Mrs. Ricker to the Saunders' house for social reasons. Mrs. Saunders told Mrs. Ricker that her house was for sale. Prior to that, Mrs. Ricker did not know that plaintiff's agent had, a few months earlier, shown the house to her husband. Mrs. Ricker liked the house and convinced her husband to look at the inside of the house. The Rickers eventually purchased the house for $47,000. The trial and appellate courts held that plaintiff's agent was not the procuring cause of the sale.

Lloyd Hammerstad, Inc., is distinguishable. There, the agent's efforts did not set in motion a series of events that culminated in the sale. Stated another way, there was *no* causation – none whatsoever – between Ms. Ross' efforts and the sale.

Here, the Prudential sign set in motion a series of events that culminated in the sale. Had Dr. Place not seen the

Prudential sign earlier, he would not have directed his sister to the property. Had his sister not seen the property, she would not have purchased it. Prudential therefore is owed a commission.

C. The Lower Court's Reasons for Denying Prudential's Commission Request were not Legally Sufficient:

The lower court issued a short letter opinion which set forth its reasons for denying Prudential a commission. (CP 303-04). There were three reasons: (1) Plaintiff's efforts were "less than minimal" (CP 304, last ¶); (2) The Eastmans did not see the flyers or the Prudential sign (CP 304, 2nd ¶); and (3) Prudential did not have any contact with the Eastmans. (CP 304, 2nd ¶).

1. The lower court erred in finding that Prudential's efforts were "less than minimal"

The record shows that Prudential expended substantial efforts toward selling the Youngs' property. (CP 102-04, ¶7). These efforts resulted in five offers, one of which

the Youngs' accepted, but ultimately fell through. (Id.) There is no evidence to support the lower court's finding that Prudential's efforts were "less than minimal."

2. The lower court erred in determining that procuring cause required the Eastmans to have seen the sign or the flyers:

There is no legal authority for the lower court's conclusion that "procuring cause" required the Eastmans to have seen Prudential's sign or Prudential's flyer. Rather, procuring cause requires that Prudential's efforts – here, the sign – set in motion a series of events that culminate in the sale.

3. The lower court erred in determining that procuring cause required that Prudential have contact with another broker's clients:

Prudential was the listing broker. (CP 106, ¶1). The obligation of the listing broker is to market the property. (Id). The listing broker is the agent of the seller. (Id., at ¶2). The listing agreement authorized Prudential to submit the listing to MLS, the Multiple Listing Service of the Yakima Association of Realtors. (Id., at ¶ 5). The agreement contemplated

Prudential sharing a commission with a Realtor who represented the buyer. (Id). In its complaint, Prudential acknowledged its obligation to share the commission with Creekside Realty, which represented the Eastmans. (CP 5, at ¶4.7). There is no reason to require the listing broker to have contact with another broker's clients as a condition for splitting a commission.

D. Regardless of a Procuring Cause Analysis, Prudential is Entitled to a Commission Pursuant to the Specific Terms of the Listing Agreement:

Paragraph 3.a. of the listing agreement provides in relevant part:

> If the property . . . is sold . . . within 365 days after the expiration of this Agreement to any person . . . whose attention the property was brought *through* the signs . . . then Seller shall pay Broker [6% of the purchase price].

(CP 106, italics added). As mentioned previously, "through" means "because of." (Supra, at p. 10). Also as mentioned previously, Dr. Young understood that Prudential was entitled

to a commission even if the buyers learned of the property indirectly from Prudential's efforts. (Id).

A contract can provide for payment of commissions to a broker for something less than the procuring cause of a sale. *Professionals 100 v. Prestige*, 80 Wn. App. 833, 837-38, 911 P.2d 1358 (1996). Regardless of a procuring cause analysis, because the Eastmans learned of the property "through" or "because of" the Prudential sign, Prudential earned its commission pursuant to the terms of the listing agreement.

E. Prudential is Entitled to Its Reasonable Attorney Fees, Both Below and on Appeal:

Paragraph 14 of the listing agreement authorizes an award of attorney fees to the prevailing party, both in the lower court and on appeal. (CP 107). This court should direct the lower court to include in its judgment an award of reasonable attorney fees for Prudential, both for its fees in the lower court and on appeal. RAP 18.1 (i).

VI. Conclusion

Prudential earned its commission because it was the procuring cause of the sale: Prudential's efforts (the sign) set in motion a series of events that culminated in the sale. Prudential also is entitled to a commission pursuant to the specific terms of the listing agreement.

This court should (1) reverse the lower court's summary judgment, including its award of attorney fees to the Youngs; (2) direct entry of summary judgment in favor of Prudential for (a) Prudential's commission, (b) plus 12% interest per annum from the date of closing (see analysis at CP 266), (c) plus reasonable attorney fees in the lower court and on appeal, and (d) statutory costs.

Respectfully submitted this 13 day of October, 2010.

FINNEY, FALK, LAWRENCE-BERREY
& NAUGHT, PLLP
Attorneys for Appellant

BY: _____
ROBERT E. LAWRENCE-BERREY, JR.
WSBA NO. 19703

AFFIDAVIT OF MAILING

I, JULIE BERRY, hereby certify under penalty of perjury under the laws of the State of Washington that the following is true and correct:

I am the assistant to Robert E. Lawrence-Berrey, Jr., the attorney for Appellant and am competent to be a witness herein.

On October 13, 2010, I caused to be mailed by U. S. Mail, postage pre-paid, a copy of Appellant's Brief to D.R. (Rob) Case of Larson, Berg & Perkins, LLC, attorneys for Respondent, at 105 North Third Street, Yakima, WA 98901.

On the same date, I caused to be mailed to Clerk, Court of Appeals, by U. S. Mail, postage pre-paid, the original and one copy of Appellant's Brief, at 500 N. Cedar, Spokane, WA 99201.

I have read the within and foregoing affidavit, know the contents thereof, and believe the same to be true.

Signed at Yakima, Washington, this 13 day of October, 2010.

Julie Berry

JULIE BERRY

EXCLUSIVE LISTING AGREEMENT CONTRACT

1. **EXCLUSIVE RIGHT TO SELL:** Kipp & Carmen Young (hereinafter referred to as "Seller") hereby employs and grants Prudential Almon Realty (Company Name, hereinafter referred to as "Listing Broker"), the exclusive and irrevocable right to sell the real property ("Property") commonly known as 610 Noble Hill Rd. located in the City of Yakima, County of Yakima, State of Washington, legally described as follows: (If the legal description is omitted, incomplete or inaccurate, agent is authorized to write in or attach hereto, at any time the correct legal description).

Seller grants Listing Broker the exclusive right to market, show, advertise, submit offers to purchase, and receive deposits for the purchase/sale, trade, exchange, lease of the property.

2. **DEFINITIONS**: For purposes of this Agreement, the words "sell" and "sale" include a contract to sell, an exchange or contract to exchange, an option to purchase, a lease with option to purchase, and/or a lease. The words "Seller" and "Buyer" include Landlord and Tenant, respectively, in real estate rental or leased transactions. The word "Agreement" refers to this exclusive Listing Agreement and any extensions or modifications to it. The "Listing Broker" or "Broker", and/or "Listing Agent" is the agent of the Seller and is a "Participant" in the Multiple Listing Service of the Yakima Association of Realtors®, Inc. ("MLS"). The foregoing terms may be used interchangeably in this Agreement. The word "term" includes any extension or modification.

3. **TERM OF AGREEMENT**: Broker's employment and sole right to sell shall continue from the 4 day of May, 20 08, until midnight of the 7 day of Nov, 20 08.

4. **AUTOMATIC EXTENSION**: If Seller accepts an offer to sell during the term of the Agreement, the Agreement automatically continues through the closing date of that transaction or the extension date of this listing.

5. **BROKER OBLIGATIONS AND AUTHORITY** - a. Seller authorizes Broker to submit this listing to MLS, and at Broker's discretion, to any other listing service, including posting on the Internet, and authorizes Broker to cooperate with and compensate other agents for a share of the sales commission in a manner acceptable to the Broker. If submitted to MLS, the information on the attached Listing Input Form(s) shall be published by MLS. Such information has been furnished by Seller or gathered from other sources and is not guaranteed by Broker.

b. Seller authorizes Broker to advertise the Property for sale by newspaper or other means, including a picture of the Property, to promote its sale. Broker may erect a "for sale" sign and may install and use an MLS key safe (lockbox) containing one or more keys to the Property which may be used by Participants and their agents, whether acting as agents for either Seller or a potential buyer, including affiliated third parties, such as inspectors and appraisers. If a key-safe (lockbox) is to be placed on the Property, Seller assumes the risk of improper and unauthorized entry by means thereof. It is understood that MLS is not a party to this Agreement and it assumes no responsibilities hereunder.

c. Broker, participants, subagents, and MLS shall not be responsible for, nor incur any liability for loss, vandalism, theft or damage of any nature or kind whatsoever to the Property and/or to any personal property therein.

d. Upon execution of any sale agreement by Seller, Broker shall not be obligated to seek additional offers to purchase the Property or continue to show or market said Property. Upon closing the transaction, Broker is authorized to report the sale price, terms and financing to MLS along with all information relative to the Property that is conducive to the development and maintenance of comparable files and statistics.

e. By signing this Agreement, Broker agrees to represent and act as agent for Seller within the scope of this Agreement. It is understood and agreed that this Agreement creates an agency relationship with the Broker and the Listing Agent only, and not with any other sales associates of Broker. A broker or salesperson, other than the Broker or Listing Agent, who procures a prospective purchaser of the Property will not be representing the Seller and may represent the Buyer.

f. In any of the following situations, a potential conflict of interest may arise which could result in Broker and/or Listing Agent representing both Seller and Buyer as a dual agent:

i. If the Property is offered or sold to a Buyer represented by one of Broker's salespersons (other than Listing Agent), or to a Buyer represented by Broker, then Broker is acting as a dual agent.

ii. If the Property is offered or sold to a Buyer who Listing Agent also represents, then Listing Agent and Broker are acting as dual agents.

iii. If the Property is offered or sold to a salesperson in Broker's office, or to Listing Agent, then Broker is acting as a dual agent.

In the event one of these situations occur, Seller consents to Broker and/or Listing Agent acting as a dual agent, and Broker or Listing Agent is authorized to represent both parties in such a transaction. Seller acknowledges that a dual agent represents both parties to a transaction; that the parties' interests in the transaction may differ; that a dual agent is not permitted to give advice to either party to the detriment of the other party, nor promote or advance the interest of either party over the other party, or disclose to either party confidential information from or concerning the other party. Seller agrees that different salespersons affiliated with Broker may represent different sellers in competing transactions involving the same buyer and that this shall not be considered action by Broker that is adverse or detrimental to the interests of either seller, nor shall it be considered a conflict of interest on the part of Broker. Seller agrees that Broker and/or Listing Agent may accept commissions from both Seller and Buyer. Seller acknowledges receipt of the pamphlet entitled "The Law of Real Estate Agency."

6. **TERMS OF SALE**: The sale price shall be $ 898,000, payable on the following terms: CASH / conventional

This price shall include the real property and all personal property included on the attached Listing Input Form(s).

7. **THIRD PARTY FINANCING**: Should third party financing be necessary to complete the sale of this Property, Seller shall pay a loan discount of no more than __% of the amount of such financing.

8. **COMPENSATION TO BROKER**: Broker's compensation for services rendered in respect to any listing is solely a matter of negotiation between Broker and Seller and is not fixed, controlled, recommended, or maintained by any person not a party to this Agreement. Seller hereby agrees to pay Broker 6 % of the purchase price or $ (dollar amount) as compensation for Broker's service, at the time of closing or upon the occurrence of any action provided for in sections "a" or "f" below. Seller agrees to pay the compensation if (1) a broker procures a buyer on the terms set forth in Paragraph 6 above, or on any other terms acceptable to Seller; or (2) Seller directly or indirectly or through any other person or entity other than Broker, during the term hereof, enters into an agreement to sell the Property. In the case of a lease, the total commission shall be ___% of the total rents payable during the first _ year(s) of the term of such lease plus _____% of the rents payable during the remainder, if any, of the term thereof. If such lease provides for a renewal option(s) and any such option(s) is exercised, an additional commission of_____% of the rents payable during each such renewal period shall be paid in cash upon exercise of each such renewal option.

a. If the property or any portion thereof or any interest therein is, directly or indirectly, sold, exchanged, leased or is purchased under an option, within 365 days after the expiration of this Agreement to any person with whom a Broker negotiated or to whose attention the Property was brought through the signs, advertising, or any other action or effort of a Broker, Broker's agents, employees or subagents, or on information secured directly or indirectly from or through a Broker during the term of this Agreement, then Seller shall pay Broker the above compensation

[illegible] from the other party to the exchange as well as from Seller.

c. Seller shall pay compensation according to the above conditions unless the sale or exchange is entered into during the term of any valid exclusive authorization to sell subsequently given by Seller to another Participant of MLS.

d. Seller authorizes Broker to cooperate with other Participants, to appoint subagents, and to divide the above compensation with other Brokers irrespective of agency relationship(s), and in a manner acceptable to Broker.

e. Seller shall execute and deliver instructions into escrow which shall irrevocably assign Broker's compensation in the amount agreed to above. Such compensation shall be paid from Seller's proceeds at closing or from funds contributed by Seller if Seller's proceeds are insufficient.

f. Should a sale of the Property be pending under the terms of this Agreement, Seller agrees to pay Broker the above compensation if Seller withdraws the property from the sale or exchange or otherwise prevents performance by buyer or a Broker without the consent of that Broker or makes the property unmarketable by any voluntary act during the term of this Agreement. If Seller cancels this Agreement without legal cause, Seller may be liable for damages incurred by Broker as a result of cancellation, regardless of whether Seller pays a commission to another MLS member.

9. **CLOSING**: Interest, taxes, rents, reserves, assumed encumbrances, homeowner's fees, and insurance are to be prorated as of the date of closing the transaction unless otherwise designated. Seller agrees to furnish to Buyer and pay for a standard form of title insurance policy showing marketable title to the Property. Seller understands that Buyer may request an extended form of title insurance which may require additional cost of the title insurance and a physical survey, both of which are negotiable costs. Seller agrees to pay real estate excise tax, and one-half of any escrow fees, or such portion of escrow fees as provided by law in the case of a VA financed sale. Buyer shall have the right to select the closing agent. Seller agrees to execute the necessary documents, including a Real Estate Contract (in a standard form generally accepted in Yakima County), or conveyance by Statutory Warranty Deed, Bill of Sale for personal property, or such other documents necessary to implement the provisions of this Agreement and any sale, exchange or lease of the property pursuant hereto.

10. **EQUAL HOUSING OPPORTUNITY**: Seller herein states affirmatively that the Property shall be made available for inspection and sale to any party without regard to race, color, religion, sex, marital status, handicap, familial status, or national origin.

11. **SELLER'S REPRESENTATIONS**: Seller warrants that Seller is the owner of the Property or has the authority to execute this Agreement, has full power and right to sell and convey the property and that Seller has good and marketable title to the property, free and clear of all liens, encumbrances or defects, except those, if any, as set forth on the Listing Input Form(s). Seller represents and warrants that all of the information contained in the attached Listing Input Form, and, if required, in the Seller's Real Property Transfer Disclosure Form and Lead-Based Paint Disclosure Statement, shall be correct and complete.

12. **DISCLOSURE/INDEMNIFICATION**: Seller hereby agrees to indemnify, defend, and hold harmless Broker, Participants and their agents and employees, MLS and Association of REALTORS from and against all claims, damages, losses and expenses, including reasonable attorney's fees and costs (including those for appeals) incurred as a result of any situation in which the operative facts are at variance with any information or representation set forth herein or in the Listing Input Form, any real property transfer disclosure statement, or any lead-based paint disclosure statement, if Seller has failed to disclose to Broker any defects of which Seller is aware or should have been aware. This disclosure, indemnification, and hold harmless shall survive closing. Seller understands that MLS is not a party to this Agreement in any respect; the sole function of MLS is to furnish the descriptive information in the Listing Input Sheet(s) to its members, without verification, and without assuming any responsibility for such information.

13. **EXPERT ADVICE**: Seller acknowledges and understands that this form was prepared on behalf of the Participants of the MLS and that Broker is not acting as an attorney. Seller is hereby advised to obtain legal or other professional advice, if desired, in connection with this Agreement or any contract or agreement executed by Seller relating to the listing or sale of the Property during the term of this Agreement.

14. **ATTORNEYS FEES**: Should any dispute arise regarding the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys fees and costs, including those for appeals.

15. **JURISDICTION**. This Agreement shall be interpreted in accordance with the statutory and case law of the State of Washington. Venue of any action arising out of this Agreement shall be Yakima County.

16. **ENTIRE AGREEMENT**: Seller and Broker acknowledge that this Agreement constitutes the complete and entire understanding of the parties. Any modifications or extensions of this Agreement must be in writing.

I ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND THIS AGREEMENT AND THE ATTACHED LISTING INPUT FORM(S).

DATE: 5/6/2008, 2008

Seller's Signature: [signature] Seller's Signature: [signature]

Contracting Capacity: _____ Phone: 949-6995 cell Kipp (~~Work~~)

(Enter whichever applies: Owners, Sole-Owner, Guardian, Administrator, Executor, Corporate Officer, Attorney-In-Fact, etc.)

Address: _____ Phone: 949-8399 Cell Carmen (~~Home~~)

IN CONSIDERATION OF THE ABOVE, BROKER AGREES TO USE DILIGENCE IN PROCURING A BUYER/PURCHASER:

LISTING OFFICE: Prudential Almon Realty By: Margaret [signature] (Salesperson)

Address: 4112 Summitview Ave., Yakima, WA 98908 Phone 509-966-3030

In the event one of these situations occur, Seller consents to Broker and/or Listing Agent acting as a dual agent, and Broker or Listing Agent is authorized to represent both parties in such a transaction. Seller acknowledges that a dual agent represents both parties to a transaction; that the parties' interests in the transaction may differ; that a dual agent is not permitted to give advice to either party to the detriment of the other party, nor promote or advance the interest of either party over the other party, or disclose to either party confidential information from or concerning the other party. Seller agrees that different salespersons affiliated with Broker may represent different sellers in competing transactions involving the same buyer and that this shall not be considered action by Broker that is adverse or detrimental to the interests of either seller, nor shall it be considered a conflict of interest on the part of Broker. Seller agrees that Broker and/or Listing Agent may accept commissions from both Seller and Buyer. Seller acknowledges receipt of the pamphlet entitled "The Law of Real Estate Agency."

6. **TERMS OF SALE:** The sale price shall be $_____, payable on the following terms:

_____

This price shall include the real property and all personal property included on the attached Listing Input Form(s).

7. **THIRD PARTY FINANCING:** Should third party financing be necessary to complete the sale of this Property, Seller shall pay a loan discount of no more than __% of the amount of such financing.

8. **COMPENSATION TO BROKER:** Broker's compensation for services rendered in respect to any listing is solely a matter of negotiation between Broker and Seller and is not fixed, controlled, recommended, or maintained by any person not a party to this Agreement. Seller hereby agrees to pay Broker _____% of the purchase price or $_____ (dollar amount) as compensation for Broker's service, at the time of closing, or upon the occurrence of any action provided for in sections "a" or "f" below. Seller agrees to pay the compensation if (1) a broker procures a buyer on the terms set forth in Paragraph 6 above, or on any other terms acceptable to Seller; or (2) Seller directly or indirectly or through any other person or entity other than Broker, during the term hereof, enters into an agreement to sell the Property. In the case of a lease, the total commission shall be ___ % of the total rents payable during the first _ year(s) of the term of such lease plus _____% of the rents payable during the remainder, if any, of the term thereof. If such lease provides for a renewal option(s) and any such option(s) is exercised, an additional commission of _____% of the rents payable during each such renewal period shall be paid in cash upon exercise of each such renewal option.

a. If the property or any portion thereof or any interest therein is, directly or indirectly, sold, exchanged, leased or is purchased under an option, within ____ days after the expiration of this Agreement to any person with whom a Broker negotiated or to whose attention the Property was brought through the signs, advertising, or any other action or effort of a Broker, Broker's agents, employees or subagents, or on information secured directly or indirectly from or through a Broker during the term of this Agreement, then Seller shall pay Broker the above compensation.

b. In case of a trade or exchange, Broker may represent and accept compensation from the other party to the exchange as well as from Seller.

c. Seller shall pay compensation according to the above conditions unless the sale or exchange is entered into during the term of any valid exclusive authorization to sell subsequently given by Seller to another Participant of MLS.

d. Seller authorizes Broker to cooperate with other Participants, to appoint subagents, and to divide the above compensation with other Brokers irrespective of agency relationship(s), and in a manner acceptable to Broker.

e. Seller shall execute and deliver instructions into escrow which shall irrevocably assign Broker's compensation in the amount agreed to above. Such compensation shall be paid from Seller's proceeds at closing or from funds contributed by Seller if Seller's proceeds are insufficient.

f. Should a sale of the Property be pending under the terms of this Agreement, Seller agrees to pay Broker the above compensation if Seller withdraws the property from the sale or exchange or otherwise prevents performance by buyer or a Broker without the consent of that Broker or makes the property unmarketable by any voluntary act during the term of this Agreement. If Seller cancels this Agreement without legal cause, Seller may be liable for damages incurred by Broker as a result of cancellation, regardless of whether Seller pays a commission to another MLS member.

9. **CLOSING:** Interest, taxes, rents, reserves, assumed encumbrances, homeowner's fees, and insurance are to be prorated as of the date of closing the transaction unless otherwise designated. Seller agrees to furnish to Buyer and pay for a standard form of title insurance policy showing marketable title to the Property. Seller understands that Buyer may request an extended form of title insurance which may require additional cost of the title insurance and a physical survey, both of which are negotiable costs. Seller agrees to pay real estate excise tax, and one-half of any escrow fees, or such portion of escrow fees as provided by law in the case of a VA financed sale. Buyer shall have the right to select the closing agent. Seller agrees to execute the necessary documents, including a Real Estate Contract (in a standard form generally accepted in Yakima County), or conveyance by Statutory Warranty Deed, Bill of Sale for personal property, or such other documents necessary to implement the provisions of this Agreement and any sale, exchange or lease of the property pursuant hereto.