

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

HARRY H. HIGGINS REALTOR, INC.,	:	December Term, 2001
Plaintiff,	:	
v.	:	No 004106
	:	
PHILADELPHIA HOUSING	:	Commerce Program
DEVELOPMENT CORP.,	:	
Defendant.	:	Control Number 072321

MEMORANDUM OPINION

Presently before this court is defendant Philadelphia Housing Development Corp.'s Motion for Summary Judgment. For the reasons discussed below, this court will grant in part and deny in part defendant Philadelphia Housing Development Corp's Motion for Summary Judgment.

Background

In 1997, Philadelphia Housing Development Corp. ("PHDC"), a non profit corporation organized under Pennsylvania law to assist low and moderate income Philadelphians through home ownership and home improvement, faced a budget shortfall and began to search for ways to raise money. As a result, Philadelphia Housing Chief Officer, Maceo Cummings, the Executive Vice President of "PHDC", approached Harry Higgins (Higgins), a member of the PHDC Board and a real estate broker, to review a report prepared by Legg Mason regarding PHDC's properties. (Appendix to Defendant PHDC's Motion for Summary Judgment, Tab 4, 5-1-03 Higgins' deposition p. 61). Higgins' reviewed the report and reported back on his opinion. Id.

Once the report was reviewed, a meeting occurred between Cummings, John Kromer, the Director of Housing for the City of Philadelphia and a PHDC Board Member

and Higgins. Cummings and Kromer requested Higgins to analyze five PHDC properties to determine whether PHDC should keep the properties or sell the properties. Higgins was to be paid for his work. Higgins testified that during this meeting with Kromer and Cummings he raised the concern of a possible conflict of interest since he was a member of the PHDC Board. Cummings and Kromer informed Higgins that a conflict did not exist. (Id. p. 80) Kromer also stated he would make an application to HUD to ensure that a conflict did not exist. (Id.). Thereafter, Higgins met with Theonita Coles, Esquire, PHDC's general counsel, to discuss the following issues (1) conflict of interest, (2) Higgins' Board membership and (3) contract terms. (Id.).

On September 1, 1997, Higgins and Cummings signed a contract requiring HHR to perform the following services for PHDC:

PHDC intends after certain due diligence, to enter into a listing contract with HHR and proceed with marketing and selling certain if not all designated multifamily properties. Services to be provided as a real estate broker are as follows: 1) Assess the potential marketability and market value of said properties; 2) Survey of the properties to assess physical condition; 3) Review with PHDC the options available to PHDC from the sale of any or all multifamily buildings and recommend most expeditious approach of marketing properties; 4) Provide other services, as required, and if necessary to place properties on the open market such as appraisal, environmental, etc. Services must receive the prior approval of PHDC prior to initiation. (Appendix to Defendant PHDC's Motion for summary Judgment September 1, 1997 Contract- Tab 5).

The contract also anticipated listing agreements with HHR by establishing a commission schedule for those agreements. (Id.).

On October 15, 1997, a meeting of the Finance Committee of the Board of Directors of the PHDC was held. Present at the meeting were Cummings, Lynda Orfanelli, chairperson, Thomas McIntosh, Alan Brown, Deputy Director and William Yurkow, Director of Finance. During the meeting, Ms. Orfanelli inquired about the progress of the marketing efforts for the sale of the PHDC multifamily developments. In

response, Mr. Cummings noted that Higgins was under contract to evaluate and potentially sell the projects. (Appendix to Defendant PHDC's Motion for summary Judgment Finance Committee Minutes 10-15-97 at 2 Tab 10.) Ms. Orfanelli noted that the use of a Board Member to provide services to PHDC at a fee is unusual. Id. She also asked whether a conflict of interest existed and noted the wrong impression may be given as a result of the situation. (Id.) Cummings responded that Higgins was selected with the knowledge of the Director of Housing and due to his history and knowledge of PHDC as well as the fee that he offered to provide the services to expedite the listing of the PHDC properties. Id. Cummings felt it was in the best interest of PHDC in having Higgins perform the service and noted that they were continuing to speak to other brokers and buyers who show an interest in the multifamily developments. Id.

On October 24, 1997, a full meeting of the Board was held wherein Cummings briefed the Board about the October 15, 1997 Finance Committee meeting. (Appendix to Defendant PHDC's Motion for Summary Judgment Board Minutes 10-24-97 at 3 Tab 11). Cummings, among other things, updated the Board regarding the financial status of PHDC and distributed the financial update and program income report to the Board. Id. He also informed the Board that the multifamily properties were being evaluated to determine if they are worth listing on the open market in order to pay back deficit financing. The report from the Finance Committee was accepted by the Board. (Id.).

Between September 1, 1997 and January 19, 1998, Higgins, provided services in accordance with the September 1, 1997 contract. These services were paid by PHDC and are not the subject matter of this dispute. (Appendix to Defendant's Motion for

Summary Judgment Cummings 2-6-03 p. 157-158 Tab 3 ; Tab 4 Higgins dep. 5-1-03
134, 161, 163).

Thereafter, PHDC made the decision to sell five properties.¹ On January 19 and 20, 1998, Higgins and Cummings signed five exclusive brokerage agreements for the subject properties. (Appendix to Defendant PHDC's Motion for summary Judgment Tab 12). The contracts prepared by HHR provide Higgins with an exclusive right to sell the subject properties for a one year period January 19, 1998 – January 19, 1999. Each agreement had an agreed listing price and provided that PHDC would not list the property with any other broker during the said one year period. PHDC agreed to pay Higgins a 4% commission if he was the sole agent and 3% if there was a subagent. Higgins also agreed that if his commission exceeded \$50,000.00, he would credit 50% of his analysis fees, and if the commission exceeded \$100,000.00 he would remit 100% of his analysis fee. (Id.).

On the last Sunday of January 1998, Cummings suffered a heart attack. Alan Brown, PHDC's deputy director, assumed Cummings' duties in his absence. (Appendix to Defendant PHDC's Motion for Summary Judgment Tab 13 p.2.).

On February 4, 1998, a meeting of the full Board was held. (Id.). During this Board meeting, Mr. Acosta, a Board Member, inquired about the PHDC deficit. Mr. Brown responded that PHDC was in the process of selling the multifamily properties to make up the deficit. Higgins stated that PHDC entered into agreements between his firm to sell the properties. Mr. Marks, another Board Member, felt that the listing agreements with PHDC and HHR constituted a conflict of interest and asked Ms. Coles, PHDC's

¹ The five properties listed for sale were 3416 Haverford House, Fairmount Manor, Marshall Arms, Aspen Village and Elrae II. (Tab 12).

general counsel, her opinion on the matter. Id. Ms. Coles responded that she felt it was a conflict of interest.² Kromer stated that a waiver from HUD was requested to retain Higgins and if denied OHCD would provide non-federal funding to pay. Marks stated this matter should be tabled and canceled until further notice and review by the Board. Id.

On February 10, 1998, Mr. Marks wrote a letter to Alan Brown, PHDC's requesting a special Board Meeting to discuss the conflict of interest in the listing agreements. (Appendix to Plaintiff's Motion for Summary Judgment Tab I) On February 12, 1998, Mr. Brown wrote to Higgins and stated that in his judgment it is proper and just for PHDC to honor its agreements with him as a broker for the sale of its Multifamily properties in general but more specifically as it related to one of the properties Haverford Manor. (Appendix to Plaintiff's Motion of Summary Judgment Tab J).

On February 19, 1998, Kromer responded to Marks by writing to PHDC's chairman that it was PHDC who solicited Higgins and that the engagement of Higgins to assist PHDC professionally with respect to the marketing of the rental properties was reported to PHDC Board on several occasions. (Appendix to Defendant's Motion for Summary Judgment Tab 27).

On March 5, 1998, Ms. Coles prepared a conflict of interest Memorandum directed to the Conflict of Interest Committee which outlined the legal problems surrounding the listing contracts and stated that their execution constituted a violation of various conflict of interest laws. (Appendix to Defendant's Motion for Summary

² Plaintiff claims that Coles changed her opinion on the conflict of interest question. (Appendix to Defendant's Motion for Summary Judgment Higgins, Tab 4 5-1-98 pp. 88, 90-99, 182).

Judgment Tab 15). On March 6, 1998, the Conflict of Interest Committee met. During the meeting, Coles changed her March 5, 1998 memo to reflect that the listing agreements did not violate State or Local Law and that the PHDC By Laws allow Board members to have a contract so long as it is discussed. (Appendix to Defendant's Motion for summary Judgment Tab 14). The Committee voted unanimously to cancel the contracts with Higgins based upon nondisclosure and no authorization given by the PHDC Board of Directors. The Committee also voted to pay for Higgins services to that date. (Appendix to Defendant's Motion for Summary Judgment Conflict of Interest Committee Minutes 3-6-98 at 2, Tab 14).

On March 27, 1998, the full Board agreed with the recommendations of the Conflict of Interest Committee and voted to terminate the listing agreements or pay Higgins for his services to that date. (Appendix to Defendant's Motion for Summary Judgment Conflict of interest Committee 4-8-98 at 1 Tab 16). That same day, Mr. Brown, PHDC's Deputy Director informed Higgins that the multifamily properties were being withdrawn from the market with the exception of Haverford House. Higgins was asked not to entertain any letters of intent or bid offers from this point forward and to reject any that have been made on PHDC's behalf. (Appendix to Defendant's Motion for Summary Judgment Tab 17).

On April 4, 1998, Mr. Brown wrote once again to Higgins that the sale of the Haverford House is in effect and that HHR is entitled to receive a 3% fee payable at settlement on April 30, 1998. (Appendix to Plaintiff's Motion for Summary Judgment Tab N).

On April 17, 1998, the PHDC Board voted to amend the By Laws to prohibit directors, officers or employees of the Corporation to enter into any contract or agreement with the Corporation for materials, goods or services, mortgages or sale of any nature whatever relating to any project or business of the corporation.

On April 20, 1998, Higgins forwarded a letter to Cummings enclosing four letters of intent relating to the properties. (Appendix to Defendant's Motion for Summary Judgment Tab 18). Higgins also produced a list which identified 34 individuals or entities of potential buyers. (Appendix to Defendant's Motion for Summary Judgment Tab 19).

On November 16, 1999, Higgins initiated a lawsuit against PHDC to recover a commission on one of the multifamily properties, Haverford House. On July 19, 2000, the lawsuit was dismissed with a judgment of non pros with a specific direction from the court that relief from the judgment must comply with Pa. R. Civ. P. 3051. In the Spring and Summer, 2001, the subject properties were sold as a group to SBG Management for a total of over \$5 Million. Defendant's allege that the purchaser was not an entity that Higgins had identified as having been contracted by Higgins. (Appendix to Defendant's Motion for Summary Judgment Tab 23, Tab 24.).

In December, 2001, Higgins instituted the instant lawsuit against PHDC. Defendant has now filed this motion for summary judgment.

DISCUSSION

I. Legal Standard

A proper grant of summary judgment depends upon an evidentiary record that either (1) shows the material facts are undisputed or (2) contains insufficient evidence of

facts to make out a prima facie cause of action or defense. Destefano & Associates, Inc. v. Cohen, 2002 WL 1472340,* 2 (Pa. Com. Pl. 2002) (Herron). Under Pa. R.C. P. 1035.2(2), if a defendant is the moving party, he may make the showing necessary to support the entry of summary judgment by pointing to evidence which indicates that the plaintiff is unable to satisfy an element of his cause of action. Id. The nonmoving party must adduce sufficient evidence on an issue essential to its case and on which it bears the burden of proof such that a jury could return a verdict favorable to the non-moving party. Id. When the plaintiff is the moving party, “summary judgment is proper when if the evidence, viewed favorably to the plaintiff, would justify recovery under the theory he has pled.” Id. (quoting Horne v. Haladay, 728 A.2d 954, 955 (Pa. Super. 1999); citing Pa. R. Civ. P. 1035.2). Summary judgment may only be granted in cases where it is “clear and free from doubt that the moving party is entitled to judgment as a matter of law.” Id.

II. Count I of the Complaint Must Be Dismissed

HHR filed a lawsuit against PHDC in November 1999 related to Haverford House property listing agreement to recover its commission. This lawsuit was dismissed with a judgment of non pros on July 19, 2000 with a specific direction from the court that relief from the judgment must comply with Pa. R. Civ. P. 3051.³ In December 2001, HHR instituted the present action which in essence asserts the same cause of action asserted by HHR in the November 1999 lawsuit. At no time did plaintiff comply with the requirements of Pa. R. Civ. P. 3051.

³ Rule 3051, Relief From Judgment of Non Pros provides that relief from judgment of non pros shall be sought by permission. All grounds for relief, whether to strike off the judgment or to open it, must be asserted in a single petition. In order to open the judgment, the petition must be timely filed, a reasonable explanation or legitimate excuse for the activity or delay must exist as well as a meritorious defense. Pa. R. Civ. P. 3051.

In Schylkill Navy v. Langbord, 728 A.2d 964, 969 (Pa. Super. 1999), the court was faced with a similar issue. In Schylkill, members of a committee that sponsored rowing competitions filed a complaint against owners of an antique store to recover a trophy that had traditionally been awarded to winners of the competition. The owners' filed preliminary objections alleging among other issues that the complaint should be dismissed based on the members' failure to obtain relief from two prior non pros judgment. The court sustained the owners' preliminary objections and dismissed the complaint with prejudice. The court held that permission to proceed with an action in light of the non pros judgments must be obtained from the trial court through a petition pursuant to Rule 3051. Id. The court further stated that the courts permission is a prerequisite to proceeding with a new cause of action. Id. In reaching its decision, the court relied upon the record which reflected that plaintiff had twice previously suffered a judgment of non pros and determined that the actions were filed without regard to the non pros judgments. Id. As a result, the court ruled that the complaint should not have proceeded to trial unless or until plaintiff filed a petition to strike and or open the judgment of non pros. Id. (citing Gates v. Servicemaster Commercial Service, 428 Pa. Super. 568, 631 A.2d 477 (Pa. Super. 1993)).

In the case sub judice, plaintiff acknowledges that a petition to open or strike the judgment of non pros should be filed before a complaint asserting a similar cause of action is initiated. Plaintiff however argues that in the instant case, it was not required to satisfy the requirements of Rule 3051 because Count I in the first lawsuit is not the same as Count I in the instant lawsuit. The court does not agree. A review of the first lawsuit and Count I in the instant lawsuit demonstrates that paragraphs 1 through 4 are repeated

verbatim, the exhibits are identical and the same \$18,000.00 in damages is sought for the same transaction. Plaintiff should have filed a petition to open the judgment of non pros pursuant to Rule 3051 before including Count I within the instant cause of action. There is nothing in the record to indicate that plaintiff complied with Pa. R. Civ. P. 3051.

Accordingly, Count I is dismissed.⁴

III. Genuine Issues of Fact Exist as to whether PHDC violated the Non Profit Corporation Act.

PHDC argues that under the terms of the Non Profit Corporation Law of 1988, 15 Pa. C.S. § 5728 (“The Act”), all the contracts between PHDC and HHR were voidable by PHDC because Higgins, an interested Board Member, did not obtain the required approval from the Board. In response, HHR argues that the contracts between PHDC and HHR do not violate the Non Profit Corporation Law because there was full and complete disclosure of Higgins’ contract to the PHDC Board.

Title 15 P.S. section 5728, Interested Members, Directors or Officers; Quorum discusses a directors, officers and members ability to enter into contracts with a non profit corporation. Section 5728 provides:

- (a) General rule- No contract or transaction between a nonprofit corporation and one or more of its members, directors or officers or between a nonprofit corporation and any other corporation, partnership, association, or other organization in which one or more of its directors are directors or officers, or have a financial interest, shall be void or voidable solely for such reason, or solely because the member, director or officer is present at or participates in the meeting of the board of directors which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose, if:
 - (1) the material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors and the board in good faith authorizes the contract

⁴ This ruling does not preclude plaintiff from filing the appropriate petition to open the judgment entered in the first lawsuit.

or transaction by the affirmative votes of a majority of the disinterested directors are less than a quorum;

- (2) the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the members entitled to vote thereon, if any, and the contract or transaction is specifically approved in good faith by vote of such members; or
- (3) the contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified by the board of directors or members.

...
(c) Applicability—The provision of this section shall be applicable except as otherwise restricted in the bylaws.

Id.

PHDC argues that the exceptions set forth in section 5728 do not apply because the PHDC Board never had the opportunity to vote on the listing contracts until March 27, 1998, when it voted to terminate the contracts. HHR argues that genuine issues of material fact exist concerning PHDC's Board knowledge of the Higgins' contracts and the disclosure of the contracts to the Board. Additionally, HHR argues that section (c) of 5728 is applicable to the facts at hand. HHR argues that pursuant to section (c) of 5728, non profit corporations have a right to adopt their own conflict of interest standard, which may be different than that provided in subsection (1), (2) or (3).

A review of PHDC's by laws demonstrates that they do contain a conflict of interest provision. This provision provides:

“No Director, officer or employee of the Corporation shall have or shall acquire any interest, direct or indirect, in any project which the Corporation is promoting, or in any contract or proposed contract for materials or services or in any lease, mortgage, sale, or contract of any nature whatever relating to any such project or to the Corporation, without forthwith making written disclosure to the Corporation of the nature and extent of his interest, and such disclosure shall be entered in writing upon the minute book of the Corporation. No Director who has such an interest shall vote on any matter relating to such interest.” (Appendix to Defendant's Motion for summary Judgment Tab 27).

This provision solely requires the director, officer or employee to make written disclosure to the corporation of the nature and extent of his interest and such disclosure shall be entered in writing upon the minute book of the Corporation. According to this by law, no vote is required.

The court is now left with the task of construing PHDC's Conflict of Interest by law with section 5728. In construing corporate bylaws, courts will interpret them reasonably if possible and will not scrutinize their terms for purposes of making them void and will not hold them invalid though every particular reason for them does not appear. Dugan v. Fireman's Pension Fund of Philadelphia, 94 A.2d 353, 372 Pa. 429 (1953). By Laws are subject to the same rules of construction as a written contract signed by all the parties. McCloskey v. Charleroi Mountain Club, 390 Pa. 212, 134 A.2d 873 (1957). By Laws must be consistent with the law of land and are subordinate to the laws of the Commonwealth. De Champlain v. P. & R. Home Ass'n, 171 Pa. Super. 420, 90 A.2d 603 (1952); 15 Pa. C.S. § 5504.

Here, PHDC's conflict of interest by law is silent as to whether a vote is required as in section 5728 to affirm interested members contracts with the non profit corporations. The court construes this silence as an acceptance of the requirements of section 5728. If PHDC meant to exclude the vote requirement under section 5728, PHDC would have expressly stated so within this provision. This interpretation is reasonable in light of the fact that a corporation's by laws should be consistent with the law of the Commonwealth. De Champlain supra. In order for PHDC's by law discussing conflict of interest to be consistent with section 5728, a vote by board members, on interested directors, members and officers contracts should occur.

The record presented by the parties demonstrates that a genuine issue of material fact exists as to whether Higgins' contracts were disclosed or known to the Board and whether the Board in good faith authorized the contracts by an affirmative vote of a majority of the disinterested directors. The record demonstrates numerous letters and Board minutes wherein the listing contracts were discussed. Additionally, a factual question also exists as to whether the Board voted upon awarding the listing contracts to Higgins. Accordingly, defendant's motion for summary judgment is Denied.

IV. Genuine Issues of Material Fact Exist as to Whether PHDC Properly Terminated its Contract with HHR.

The parties executed four Exclusive Right to Sell Agreements⁵ for the Sale of Commercial Property. The terms of each agreement were identical. Pursuant to the agreement, HHR, the agent, was to endeavor to produce a buyer for the property. In exchange the Owner, PHDC, employed HHR and granted to it the sole and exclusive right to sell the property for the price and terms described herein or for any other price or terms which PHDC would accept in the Agreements of Sale. This employment was termed an agency. (Appendix to Defendant PHDC's Motion for Summary Judgment Tab 12 ¶ 7(a)). The Agreement was to begin on January 19, 1998 and end on January 19, 1998. HHR was to be paid a fee by PHDC if (1) the property sold or exchanged, by HHR or by any other person, including the PHDC, during the term of the agency, (2) HHR alone or in cooperation with another agent produces a buyer who is ready, willing and able to purchase the property, (3) the property is sold or exchanged in whole or in part for ninety days to anyone who had been shown the property or with whom the Agent, other

⁵ The parties entered into five exclusive listing agreements. The listing agreement for the property is contained in Count I of the complaint. Since Count I was dismissed for plaintiff's failure to follow procedural rules, the court will not include the Haverford House in these discussions.

Agent or PHDC has negotiated during the term of this agency, after the expiration date of the agency providing the property is not listed under an exclusive right to sell agreement with another broker at the time, (4) PHDC receives compensation from eminent domain proceedings instituted against all or part of the property during the term of this Agency, rendering the property unmarketable in its total state as offered, and (5) PHDC donates all or part of the property during the term of this agency, rendering the property unmarketable in its total state as offered. Id ¶7 (C) (2).

A plain interpretation of the terms of the listing agreements read as a whole demonstrate that the listing agreements are unambiguous and subject only to one reasonable interpretation, that the listing contract between HHR and the PHDC were valid for a period of one year. See Guardian Life Ins. Co. of America v. Zerance, 505 Pa. 345, 479 A.2d 949, 953 (Pa. 1984)(where contractual language is unambiguous and thus subject to one reasonable interpretation, interpretation is a question of law for the court demanding application of the written word consistent with its plain or customary meaning.). Upon the expiration of the listing contract PHDC was no longer legally bound to HHR. Having established the duration of the listing agreement, we must next determine whether PHDC's termination of the listing agreement constitutes a material breach of the contract for which damages are payable.

With respect to this issue, the principles of law applicable to principal and agent govern the respective rights and liabilities of HHR and PHDC. Under general agency law, a principal always has the power to revoke an agency, but may be liable for damages where the revocation is not pertinent to the agency or the agent's duties to the principal. Dorn v. Stanhope Steel, Inc., 368 Pa. Super. 557, 534 A.2d 798,803 (Pa. Super.

1987)(citing Restatement (Second) of Agency § 118 comment b). To terminate an agency, there must be either a lapse of time, accomplishment of the anticipated results, external changes in the relationship (e.g., death of parties, changes in business conditions), or mutual consent, revocation, or renunciation. Id (citing Scott v. Purcell, 264 Pa. Super. 354, 399 A.2d 1088, 1093 (Pa. Super. 1979)).

The undisputed facts of record evidence that the listing agreements term were for a period of one year set to expire in January 1998, that the listing agreements were revoked prematurely by PHDC on March 27, 1998 and that the subject properties were sold in 2001 for \$7,000,000.00. HHR has not presented any evidence that it negotiated a sale or had a completed sale during the time that the listing agreements were commenced and the time they were revoked. Nor has HHR presented any evidence that it participated in or supplied the buyer for the sale of the properties in 2001. Since, HHR has not presented any facts to suggest that it was involved with the ultimate sale of the properties in 2001, the court finds that sales were not negotiated during the contract term and that HHR is not entitled to any part of the commission resulting from the sale of the properties.

Despite this conclusion, HHR may nonetheless be entitled to damages from PHDC as a result of the termination of the listing agreements. HHR argues that it produced and distributed a sales brochure which was communicated to some 34 prospective buyers and produced and forwarded to PHDC four letters of intent. HHR also claims that PHDC did not act in good faith when it revoked the listing agreements. PHDC argues that all expenses incurred by HHR were paid and that legitimate reasons existed for revocation of the listing contract. Based on the forgoing genuine issues of

material fact exist as to whether PHDC wrongfully terminated the listing agreements and whether HHR is entitled to damages as a result of PHDC's alleged wrongful revocation of the listing agreement. Accordingly, defendant's motion for summary judgment is Denied.

CONCLUSION

For these reasons, this court finds that Defendant's PHDC motion for summary judgment is granted in part and denied in part as follows:

1. Defendant's Motion for Summary Judgment with respect to Count I of Plaintiff's complaint is **Granted**. Count I is Dismissed.
2. Defendant's Motion for Summary Judgment relating to the voidability of the listing agreements under the Non Profit Corporation Act ("the Act") is **Denied**. Genuine issues of material fact exist as to whether the contracts in dispute were presented and approved in accordance with the Act and PHDC's By Laws.
3. Defendants' Motion for Summary Judgment as it pertains to PHDC's termination of its relationship with HHR is **Granted** in part and **Denied** in part. Defendant's Motion is granted to the extent that plaintiff seeks to collect commissions for the sale of the subject properties that occurred in 2001. Defendant's Motion for Summary Judgment is **Denied** to the extent PHDC wrongfully terminated the listing contract and whether HHR suffered any damages related to the revocation of the listing contracts which resulted during the term of the agency.

seeks to recover damages related to the revocation of the listing contracts as to the subject properties which resulted during the term of the agency.

BY THE COURT,

C. DARNELL JONES, II, J.

Dated: December 22, 2003