

Stiffed brokers fight back against firms

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Citi-Spaces bounced checks to agents this winter when the firm was short on cash.

From broker to broke: A growing number of real estate firms are skimping on paying their bills and squabbling with agents over commissions, industry insiders say.

Agents, vendors and customers are complaining that real estate firms, struggling to make ends meet in a slow market, are skipping payments, paying them late or bouncing checks.

Meanwhile, customers say firms are keeping refundable deposits. And more lawsuits are being filed by vendors — ranging from accountants to movers — who claim they, too, have been stiffed.

For their part, brokers are more likely to file suit and incur legal fees over small payments they might otherwise have let slide.

"In all sorts of contracts, suddenly payments are not being made," said Debra Guzov, a founding partner at law firm Guzov Ofsink. "We're seeing more of it because companies are having problems making payments in general and staying in business."

Guzov and other attorneys say they've seen a rash of lawsuits from agents claiming they are owed commissions by their brokerages.

In May, former Corcoran Sunshine Marketing Group sales director Nancy Reese sued Corcoran and its parent company, NRT, for some \$270,000 in unpaid commissions for sales at new development condos, including 10 West End Avenue, the Avery and Five Franklin Place.

While Reese is attempting to collect commissions at some developments where buyers backed out of their contracts, others involve closed sales, which means she should receive her commission promptly, said Guzov, Reese's attorney.

"There were some properties that [had deals that] clearly closed, and commissions are owed," Guzov said.

Corcoran has not yet responded to the complaint, which was filed in state Supreme Court in May, but Reese said these types of cases are much more common now that the real estate market has soured, even for situations that seem "very clear-cut."

"Traditionally, these disputes did not arise," she said. "Now we're seeing people just not being paid."

Corcoran Sunshine did not respond to requests for comment.

Luigi Rosabianca, of Rosabianca & Associates, said he has roughly six cases similar to Reese's, with brokers claiming they haven't been paid. He said firms seem to be looking for loopholes in commission agreements to get out of paying their agents.

"In good times, there's enough money to go around," Rosabianca said. "When things get tight, people get creative."

Guzov said she has been approached by a number of brokers who were on-site sales agents at new development projects, but were fired before the units they sold had closed.

"We're seeing instances where people are being told to leave for one reason or another, and then the commissions are being kept by the brokerage firm," she said. "In effect, the brokerage companies are interfering with their right to earn their commission."

Worse, some agents are being asked to give money back to the brokerage, she said. It's common for an on-site salesperson at a new development project to receive a salary up front, in anticipation of future commission payments. Now, however, "the condos aren't selling, or they're selling more slowly than anticipated because no one anticipated the rapid decline in the real estate market," Guzov said. As a result, brokers are being asked to return the money.

In the past, "rarely, if ever, did you see the company say, 'We're coming after you for the draws you took,'" Guzov said. "Now they're saying, 'We want the money back.'"

Another problem is brokerages improperly using agents' commissions to cover firm expenses.

When a buyer writes a commission check, it's made out to the brokerage, which then takes its cut and passes the rest on to the broker. Brokers sometimes receive their portion at closing, but many brokerages pay agents their commissions at predetermined intervals, such as every two weeks or once a month. Delaying a payment any longer than that, or commingling it with the firm's other funds, is illegal, Guzov said.

"[Brokerages] are not supposed to hold it, or float the money," Guzov said. "It doesn't belong to them. They can't just decide because they need to make payroll for their administrative staff that they don't pay commissions."

Some firms, however, seem to be doing just that.

As *The Real Deal* reported last month, checks to agents at the real estate firm Citi-Spaces repeatedly bounced this winter as the firm ran short on cash. Company founder Israel Horowitz acknowledged the problem but said the firm responded by changing the way it does its accounting.

Some agents at now-defunct brokerage Coldwell Banker Hunt Kennedy, meanwhile, say they are worried they won't be paid for closed sales now that the company has folded. At least one former agent, who

asked to remain anonymous, claimed to be waiting for a \$25,000 commission payment for a month. In the past, the company paid its agents their share every two weeks, the source said.

CBHK officials have insisted that agents will be paid their full commissions.

Some firms have also been bouncing refund checks to customers.

A former agent at residential brokerage Manhattan Apartments said the company bounced a \$200 check to a client. The customer had paid the money for a refundable application fee, but didn't end up taking the apartment.

The same thing happened in another case, the source said, but that time the bounced refund check was for \$2,000.

The source said the company may be bouncing checks because it is improperly commingling agents' commissions and customers' refundable fees with the funds used to pay company expenses.

"They're rolling in [all of the] funds that come in," the source said. "They're coming from a situation where there's no liquidity and they're cutting corners, trying to put a Band-Aid over a gusher. How else can you consistently bounce \$200, \$300 and \$400 checks?"

The source said that the company also has not paid vendors, such as a moving company that helped the company switch offices in December.

In April, the Resnick Druckman Group, an accounting firm, filed suit against Manhattan Apartments, claiming it is owed \$82,640 for its services.

Jerry Weinstein, president of Manhattan Apartments, said in an e-mail to *The Real Deal* that the Resnick Druckman suit resulted from "a disagreement as to what money was due" and is expected to settle out of court.

As for the reports of bounced checks, he said: "We have returned some checks where funds are in the bank but not immediately available. Any returned check is paid the next day by certified check or cash consideration."

When it comes to unpaid vendors, "we expect to catch up soon," he said.

He pointed to the real estate downturn as the reason for the company's money woes. "Things are tough for brokers now," he said. "People don't have much cash, sales are not happening and Wall Street is not a participant at the moment. This coupled with reduced commissions has made it tough for rentals and sales alike."

To compound matters for firms, vendors and agents have become far more aggressive about pursuing unpaid fees. Lawyers say they are now more likely to file suit over small fees they might have let slide in a better market, when the next deal was always around the corner.

"Everybody's reading the fine print and enforcing their rights more aggressively," said John Serpico, a real estate attorney at law firm Serpico, Serpico & Siddiqui. "When it's the only commission in sight for the next two years, you're going to do everything you can to get it."