

The seller of a vacant building listed it for sale with a licensed real estate broker at a price of \$500,000. When the six-month listing period was about to expire, the broker presented an offer to purchase for the full listing price.

The broker did not disclose to the seller that the offer came from the broker's daughter, who planned to resell the building for \$600,000 to a company with which she had been negotiating. The seller accepted the daughter's offer, conveyed the building to the daughter, and paid the broker a commission.

After discovering that the purchaser was the broker's daughter, the seller commenced an action against the broker for return of the commission.

Who is likely to prevail in this action?

- A. The broker, because the daughter, not the broker, purchased the building in an arm's-length transaction.
- B. The broker, because the seller was obligated to sell to anyone at the full listing price.
- C. The seller, because the broker's failure to make full disclosure breached a fiduciary duty to the seller.
- D. The seller, because the daughter, not the seller, was primarily liable for payment of the commission.

Incorrect

Correct answer C

Collecting Statistics

01 min, 53 secsTime Spent

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Explanation:

Types of real estate brokers

Seller's agent Serves as seller's agent, & generally includes both:
listing broker – deals directly with seller; may help set asking price & assume primary responsibilities for advertising property for sale
selling broker – serves as subagent of listing broker & finds buyer for property

Buyer's agent Serves as buyer's agent

Dual agent Serves as seller's & buyer's agent
prohibited in many states due to likelihood of conflict of interest
where permitted, broker must disclose dual agency to buyer & seller & obtain informed consent from each

The sale of real property often involves a **real estate broker** who serves as an agent of the buyer, the seller, or both. A broker therefore **owes the principal** (buyer and/or seller) the **fiduciary duties** of loyalty, disclosure, and confidentiality. This includes the duty to make **full disclosure of any interest** that the broker, or a family member of the broker (here, the daughter), may have **in the purchase of the property (Choice A)**. Failure to make this disclosure breaches a fiduciary duty and results in the broker's loss of any commission. Therefore, the seller will likely prevail in an action for the return of the broker's commission.

(Choice B) The fact that the broker's daughter agreed to purchase the building at the full listing price did not eliminate the broker's fiduciary duty to disclose any interest the broker or a family member had in the property.

(Choice D) The commission is paid by the seller who signed the listing agreement with the broker. The daughter did not sign the listing agreement, so she was not liable for the commission.

Educational objective:

A real estate broker owes the principal a fiduciary duty to make full disclosure of any interest that the broker, or a family member of the broker, may have in the purchase of the property.

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