

Failure to Deal with Reality Leads to Case Dismissal

The owner of a large Bay Area shopping center that was slated to undergo a major renovation terminated its exclusive leasing agents for lack of performance. The agents sued for breach of contract and alleged millions of dollars in damages for leasing commissions due under the Agency Agreement. The owners of the property retained Schulze Haynes Loevenguth & Co. ("SHL") to analyze the leasing activity both during and after the period the Agency Agreement was in force, and to opine as to the economic and other factors affecting the market for the shopping center during the relevant period, as well as to the existence and amount of the Plaintiff's damages, if any. SHL was also retained to respond to the Plaintiff's damages expert's calculation of damages.

The Plaintiffs' Expert Had Created A Hypothetical Scenario That Could Only Exist Under A Set Of Assumptions Known To Be False

SHL's analysis of the Plaintiff's expert's damages model found a number of fatal weaknesses including the fact that the model ignored basic provisions of the Agency Agreement such as the timeframe during which new leases would be commissionable, the contractual expiration date, and the fact that lease renewals were specifically excluded. The model's projection as to future commissionable leases ignored the fact that equity capital and financing for the renovation work had been unavailable, as well as the effect of a severe and continuing economic slump in the region. Finally, the damages model was erroneously built on the premise that leases had been executed with prospective tenants, when in fact they had not.

All of these facts were made clear through SHL's analysis and deposition testimony. The Plaintiffs realized that their damages had been systematically deflated to near zero, and that our client had cause to terminate the leasing agents for lack of performance. Shortly after our deposition testimony, the Plaintiffs voluntarily dismissed their case.

This case serves to reinforce what has become our firm's mantra: deal with reality, maintain our independence, opine based only on the facts and circumstances of the case, and a positive outcome will result

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