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Marcus & Millichap Wins 'Turf State' Lawsuit

By Bob Howard

ENCINO, CA-Marcus & Millichap has won a federal lawsuit that has far-reaching consequences for the commercial real estate industry in "turf states" that prohibit brokers in those states from cooperating with brokers who are not licensed in the state. Marcus & Millichap's suit challenging Kentucky's turf state regulations was filed in the US District Court for the Western District of Kentucky, which has ruled that Kentucky's turf state laws are unconstitutional.

Harvey Green, Encino-based president and chief executive officer of Marcus & Millichap, tells Globest.com that the court's ruling "is much bigger than it might first appear" in terms of its impact. Although the suit challenged the Kentucky law, the court's ruling could affect the seven other states with similar laws because the ruling "talks about the portability of licenses on a national basis, especially in the commercial markets," Green points out.

Green explains that the turf states were watching the Kentucky case very carefully. "Since we have had a favorable outcome, I think that will affect what the real estate commissioners and attorney generals do in these other states," the Marcus & Millichap president says.

Under Kentucky's turf state law, a broker who had a client with property in Kentucky but who was not licensed in Kentucky was prohibited from representing that client in the state, and from participating in a deal with an agent from Kentucky. "You had to turn 100% of the deal over to a Kentucky broker," Green explains.

The state of Kentucky argued that its rules were designed to protect the consumer, but the court found that the law could have the exact opposite effect. "The complete exclusion of a buyer's broker from the transaction may well render the foreign buyer/lessee more vulnerable to fraud," the court said.

Although licensing protects the public from unscrupulous and incompetent brokers, the court decision said, "the court cannot discern how prohibiting cooperation between an out-of-state broker and a Kentucky licensed broker reinforces this protection. It appears that the prohibition's main purpose is to ensure that virtually all commissions are kept in Kentucky. This is achieved, however, at an unconstitutional cost to interstate commerce."

Green points out that the Kentucky law prevented clients from enlisting the services of trusted brokers they have worked with for years. "In many instances our clients have long-term relationships with particular brokers who know the client's procedures, due diligence preferences and the way in which the client likes to move through the acquisition or disposition process. These clients want the broker to be involved the whole way through, but the way the Kentucky law was, you could not do that," the Marcus & Millichap chief says.

The lawsuit, which alleged that the turf state laws harmed consumers by preventing access to the national market for commercial real estate brokerage and depressing real estate prices, was filed by a group of consumers and real estate brokers, with Marcus & Millichap leading the suit. Green calls the ruling a victory for all consumers, saying that commercial real estate investors "should

not be forced to choose between seeking fair market value for their property or violating state laws."

Green tells Globest.com that the lawsuit even had the support of brokers in Kentucky who see the advantage of bringing in capital sources from outside of the state as well as operating on a more national basis. The brokers felt that Kentucky was restricting their clients' potential to maximize value by tapping into national markets, and the court's ruling supported that point.

According to the court's ruling, Kentucky's prohibitions against cooperating with brokers not licensed in the state have the effect of "isolating Kentucky from the national brokerage market." The court's decision comments that the purchase and sale of real estate is often a costly and complex transaction and that, "a consumer who maintains a trusted relationship with a broker should not be compelled to accept the services of a stranger in order to make that transaction."

The seven other states that prohibit cooperation with out-of-state real estate brokers are Nebraska, New Hampshire, New Jersey, Oklahoma, Pennsylvania, Missouri and Utah. Kentucky state officials did not return calls seeking comment on the federal court ruling.

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