

**19
89** | **OVER
TWENTY
FIVE
YEARS**



How a commercial real estate broker's notes helped win a half-million dollar judgment at trial - by Michael Zapson

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I recently completed a trial which, after two weeks, resulted in my client, a commercial real estate brokerage firm, being awarded a judgment of almost a half million dollars. The unusual facts and circumstances of this case offer a lesson that every broker should heed in order to get paid for their work.

For two years the brokerage firm worked with their customer to find a location to relocate their business. The firm showed many properties to several customer representatives on behalf of the prospective tenant, but no properties were suitable. Ultimately, the broker was advised that the principal of the prospective tenant had sold the business and that they would be staying in their current space. As a result, the principal would no longer be involved with the customer.

The new principal, whom the broker had never met, announced that the tenant would be moving to a new location. The principal would also be taking additional space and entering into a long term lease at a location which the broker had previously shown to its customer while the first principal owned the business.

That announcement resulted in our commencing a lawsuit on behalf of our client, and we were the procuring cause of the lease. Even though our client had never met the new tenant principal and only had minimal contact with the landlord, we were able to establish the two years we worked with the tenant and the contacts that did take place with the landlord through the agent's copious notes which confirmed many factors included in the lease.

As described above, the agent's copious notes detailed the events, years after what had transpired. Memories can become fuzzy by the time a case goes to trial. That's exactly what had happened. The defendants which included the landlord, the tenant, and the seller of the business all had limited memory of what had previously taken place, and they had different time frames, too. Because we had the agent's notes, we were able to refresh the memories of the defendants and discredit their testimony while simultaneously adding creditability to our case.

For example, one question involved the timing of when the property was actually shown and when the parties became aware of the property. With the seller of the business denying the time frame which we had set forth, the broker's notes included a comment that became hard to dispute. Our client, the agent of the brokerage firm, noted that it had been difficult to speak with his customer as the customer's wife had recently died. This unfortunate set of circumstances enabled us to verify a date, and it was an effective way to discredit the defendants and to show the disparity in their versions of the facts, as well as adding

credibility to the broker's case.

Ultimately, the court ruled in favor of our client, to award a judgment for \$488,000 against the landlord, the tenant, and the seller of the business.

What's the take-a-way for brokers? Take good notes.

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