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Attorney for Plaintiff

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE**

PROSPECTER REALTY, INC./CENTURY  
21 MINER REALTY, a Nevada  
corporation,

Plaintiff,

vs.

Case No. CV99-06545  
Department No. 3

RICHARD GARDNER and DENISE  
GARDNER,

Defendants.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

The above-entitled matter having come on for trial before the Court on May 28, 2002.

The Plaintiff appeared with his counsel, Stephen C. Mollath, Esq. of PREZANT & MOLLATH.

Neither the Defendants nor their counsel Donald Buery, Esq. appeared, having been fully informed and noticed of the date of trial.

The Plaintiff moved for the admission of Exhibits "A", "B1", "B2", "B3", "C", "D" and "F", which the Court admitted into evidence. The Plaintiff thereafter presented the oral testimony of

1 Joe Dahl, Carter Miner, Art Gale and Francis Gale. Thereafter, the matter was submitted to  
2 the Court for decision. Based upon the above, the Court finds the following:

3 **FINDINGS OF FACT**

4 1. On February 27, 1999, the Plaintiff (Broker) and the Defendants entered into an  
5 Exclusive Agreement to Sell Contract ("Contract"). The Contract was signed by RICHARD  
6 GARDNER and DENISE GARDNER, husband and wife as joint tenants. DENISE GARDNER  
7 was aware of the existence of the Contract and did not object to the execution of the Contract  
8 by RICHARD GARDNER and consented to the management of said property by RICHARD  
9 GARDNER.  
10

11 2. The Contract provided for a 6% commission to be paid by the Defendants to the  
12 Broker if "broker procured a Buyer during the term [of the Contract] on the terms specified  
13 herein, or on other terms acceptable to owner" (at Page 1, Paragraph 1). The Contract further  
14 provided that the "owner agrees to commit no act which might tend to obstruct the broker's  
15 performance hereunder" (at Page 2, Paragraph 3).  
16

17 3. During the term of the Contract, Broker procured a ready, willing and able buyer,  
18 Art Gale and Francis Gale ("Gales"), who made three separate offers to the Defendants on  
19 May 24, 1999, June 25, 1999 and July 6, 1999. Defendants unreasonably failed to respond to  
20 those offers.  
21

22 4. Immediately upon the expiration of the Contract, Defendants contacted the  
23 Gales, independently of the Broker, and concluded a sale of the property, on September 20,  
24 1999, on substantially the same terms of the prior offers, to wit, \$470,000.00.  
25

26 5. The conduct of the Defendants was calculated to exclude the Broker from the  
27 transaction and deprive the Broker of his real estate commission.  
28

1 6. Broker set in motion a chain of events consisting of the Gale offers which, without  
2 break in their continuity, cased the Buyer and Seller to come to terms as the proximate result  
3 of Broker's activities.

4 7. The Broker expended valuable time and effort to bring to Defendants a ready,  
5 willing and able buyer.

6 8. Plaintiff was a licensed real estate broker in the State of Nevada.

7  
8 Based upon the above, the Court concludes as follows:

9 **CONCLUSIONS OF LAW**

10 1. A valid contract existed between the Broker and the Defendants for payment of a  
11 commission of 6% on a sales price of \$470,000.00, or \$28,200.00. Defendants breached said  
12 contract.

13  
14 2. Separate from a contractual obligation to pay a 6% commission on the sale,  
15 Broker performed valuable and competent services for the benefit of the Defendants and if not  
16 compensated, would constitute an unjust enrichment of the Defendants at the expense of  
17 Broker to the extent of \$28,200.00.

18  
19 3. A commission of \$28,200.00 was due Broker from Defendants on September 20,  
20 1999 and was not paid by the Defendants to the Broker.

21 4. The contract provides for attorney's fees and costs to the prevailing party.

22 NOW, THEREFORE, it is adjudged, decreed and ordered that PROSPECTER REALTY,  
23 INC./CENTURY 21 MINER REALTY have Judgment against the Defendants RICHARD  
24 GARDNER and DENISE GARDNER, jointly and severally, as follows:

25  
26 1. The principal sum of \$28,200.00.

1           2.     Interest on the principal sum of \$28,200.00 from September 20, 1999 at the legal  
2 rate in the sum of \$7,530.36 to May 31, 2002.

3           3.     Taxable costs of \$722.11.

4           4.     Attorney's fees in the sum of \$15,580.00.

5           5.     Interest on the above amounts at the legal rate from June 1, 2002 until paid or  
6 otherwise satisfied.

7  
8           IT IS FURTHER ORDERED that all sums held in First Union Securities Account No.  
9 6740-1783 be released to PROSPECTER REALTY, INC./CENTURY 21 MINER REALTY and  
10 ted to the above judgment.

11           DATED this 3rd day of June, 2002.

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13  
14           Jerome J. [Signature]

15           \_\_\_\_\_  
16 DISTRICT JUDGE  
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FILED FOR RECORDING  
AT THE REQUEST OF

Stephen C. Mollath, Esq.

2002 JUN 25 AM 9 35

LINCOLN COUNTY RECORDED

FEE 18.00 DEPT TMS

LESLIE BOUCHER

COPY

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and on record in my office.

DATE: 6-25-02

RONALD A. [Signature] Clerk of the Second Judicial District Court and for the County of Washoe, State of Nevada.

By [Signature] Deputy

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