

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D22503
T/prt

_____AD3d_____

Argued - February 10, 2009

A. GAIL PRUDENTI, P.J.
DAVID S. RITTER
FRED T. SANTUCCI
CHERYL E. CHAMBERS, JJ.

2008-02001

DECISION & ORDER

Crifasi Real Estate, Inc., appellant, v
Harv Enterprises, Inc., respondent.

(Index No. 1533/06)

Reisman Peirez & Reisman, LLP, Garden City, N.Y. (E. Christopher Murray and Daniel Berg of counsel), for appellant.

Rossi & Crowley, LLP, Douglaston, N.Y. (Bernadette M. Crowley, Sally Sancimino, Rosaleen Crowley, and Thomas J. Rossi of counsel), for respondent.

In an action, inter alia, to recover a brokerage commission, the plaintiff appeals from an order of the Supreme Court, Queens County (Elliot, J.), dated January 7, 2008, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

“To recover a commission, a real estate broker must establish, inter alia, that it procured a purchaser ready, willing, and able to buy the subject property on the terms set by the seller” (*Hampton Country Real Estate v Rizzo*, 305 AD2d 458, 459). “[M]ere agreement as to price on a proposed sale of real property does not constitute a meeting of the minds of vendor and vendee so as to entitle the real estate broker to commissions. The parties must be brought to agreement with respect to all terms customarily encountered in such a transaction” (*Kaelin v Warner*, 27 NY2d 352, 355 [internal quotations and citations omitted]; see *Hausman Realty Co. v Klaver*, 262 AD2d 613; *Harold F. Shepherd Real Estate v Ferguson*, 204 AD2d 392).

The defendant established its prima facie entitlement to summary judgment through

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its submission of deposition testimony and affidavits demonstrating that a meeting of the minds was not reached regarding essential terms of a contract to sell real property (*see Hampton Country Real Estate v Rizzo*, 305 AD2d 458; *Jacob v O'Brien*, 252 AD2d 515). In opposition, the plaintiff failed to raise a triable issue of fact (*see Hampton Country Real Estate v Rizzo*, 305 AD2d 458).

In light of our determination, it is unnecessary to address the plaintiff's remaining contentions.

PRUDENTI, P.J., RITTER, SANTUCCI and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court