

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

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Submitted - December 13, 2010

PETER B. SKELOS, J.P.
THOMAS A. DICKERSON
ARIEL E. BELEN
PLUMMER E. LOTT, JJ.

2009-09565

DECISION & ORDER

Ross Lelin, respondent, v Manohar K. Shrestha,
appellant, et al., defendant.

(Index No. 6656/06)

Manohar K. Shrestha, Manorville, N.Y., appellant pro se.

Ross Lelin, Freeport, N.Y., respondent pro se.

In an action to recover a mortgage broker's commission, the defendant Manohar K. Shrestha appeals, by permission, from an order of the Appellate Term of the Supreme Court for the Ninth and Tenth Judicial Districts, dated April 14, 2009, which reversed a judgment of the Third District Court, Suffolk County (Hackeling, J.), dated February 14, 2007, made after a nonjury trial, in favor of the defendants and against the plaintiff dismissing the complaint, and directed the entry of judgment in favor of the plaintiff and against the defendants in the principal sum of \$10,912.

ORDERED that the order dated April 14, 2009, is affirmed, with costs.

The Appellate Term of the Supreme Court for the Ninth and Tenth Judicial Districts (hereinafter the Appellate Term) properly determined that the plaintiff earned his brokerage commission. In a written agreement, the parties agreed that the plaintiff would procure a \$682,000 mortgage for the defendants. The brokerage commission was to be earned upon the defendants' signing of the mortgage commitment (hereinafter the commitment). The plaintiff procured a commitment for a lesser amount, which the defendants accepted. Although the defendants were free

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to reject the commitment offered, the plaintiff earned his commission when the defendants accepted the commitment for a lesser amount (*see Midland Mtge. Corp. v Kazarnovksy*, 128 AD2d 595; *see also Lester Morse Co. v 3 Hanover Sq. Owners Corp.*, 156 AD2d 229, 239).

SKELOS, J.P., DICKERSON, BELEN and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court