

Realtor who sued Malcolm liable for fees

[1,3 Edition]

San Diego Tribune - San Diego, Calif.

Author: Lillian E. Heffernan

Date: Apr 12, 1990

Start Page: B.9.1

Section: LOCAL

Text Word Count: 515

Document Text

A real estate agent who sued Chula Vista City Councilman David Malcolm and later dropped the suit will have to pay the city's attorney fees of \$55,445.88.

El Cajon Superior Court Judge Susan D. Huguenor awarded Chula Vista its attorney fees, saying real estate agent Truman Brooks' lawsuit was "frivolous and in subjective bad faith," acting City Attorney Ruth M. Fritsch said Tuesday.

Brooks filed the lawsuit in San Diego Superior Court in 1987, charging that he had been cheated out of a lucrative deal to find new facilities for the Sweetwater Union High School District's administrative offices.

The high school district and the city's redevelopment agency had been looking at a block of land along Third Avenue, between G and H streets, as a possible site for the district's administrative offices. The agency was considering buying the property, then leasing or selling it to the district. The two entities would then have shared some of the facilities.

Brooks had been the real estate agent for one of the property owners seeking to sell the land to the redevelopment agency, and he claimed that Malcolm promised that Brooks would be the agent to represent the redevelopment agency. Instead, the city hired real estate agent Margie Phares, also named in Brooks' suit, to negotiate the sale.

As the city's agent, Phares was eligible to split the 6 percent commission realized from any sale with the agent for the seller. That commission would have been about \$50,000, officials said.

The redevelopment agency did buy the site, with no participation from Brooks, but did not go into a partnership with the Sweetwater district, and the land remains vacant.

The day before the case was scheduled to go to trial last June, Malcolm was dropped from the lawsuit. The case proceeded against Phares but was dismissed by the trial judge. Brooks' motion for a new trial also was denied.

The court recently denied Phares' request that she be reimbursed for her attorney fees, which totaled more than \$100,000.

But according to Fritsch, the judge's action to require payment of the city's attorney fees is good news.

"The city of Chula Vista has been vindicated," Fritsch said. "I hope this serves as a message to those people contemplating meritless lawsuits against the city that not only do we say no, but we will come back and make you pay for it."

Because Malcolm was sued in his capacity as a city council member, under state code the city was obligated to provide him a defense, Fritsch said.

Most of the attorney fees were accumulated when Malcolm hired a private attorney to handle his case, and the fees paid by the city were among the highest the city has paid in a lawsuit, city records show.

Michael Crowley, Brooks' attorney, said he intends to appeal the decision to the 4th District Court of Appeals.

"The case was decided on a question of law, and that typically is reviewed by a court of appeal," Crowley said. "I am confident that this will be vindicated on appeal."

Credit: Tribune Staff Writer

Reproduced with permission of the copyright owner. Further reproduction or distribution is prohibited without permission.

Abstract (Document Summary)

El Cajon Superior Court Judge Susan D. Huguenor awarded Chula Vista its attorney fees, saying real estate agent Truman Brooks' lawsuit was "frivolous and in subjective bad faith," acting City Attorney Ruth M. Fritsch said Tuesday.

Brooks had been the real estate agent for one of the property owners seeking to sell the land to the redevelopment agency, and he claimed that [David Malcolm] promised that Brooks would be the agent to represent the redevelopment agency. Instead, the city hired real estate agent Margie Phares, also named in Brooks' suit, to negotiate the sale.

The day before the case was scheduled to go to trial last June, Malcolm was dropped from the lawsuit. The case proceeded against Phares but was dismissed by the trial judge. Brooks' motion for a new trial also was denied.

Reproduced with permission of the copyright owner. Further reproduction or distribution is prohibited without permission.