

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

COMPENSATIONMASTER, LLC,)

Plaintiff,)

v.)

LONG & FOSTER REAL ESTATE, INC.,)

Case No. CL 2016-6091

and)

THE LONG AND FOSTER COMPANIES, INC.)

Defendants.)

ORDER

On August 25, 2017, the parties appeared, by counsel, on the Motion for Partial Summary Judgment filed by the Defendants, Long & Foster Real Estate, Inc. ("LFRE") and The Long and Foster Companies, Inc. ("LFC"), and the Motion for Summary Judgment filed by the Plaintiff, CompensationMaster, LLC ("CM").

Upon consideration of the parties' respective filings and the arguments of counsel, and for the reasons stated by the Court from the bench and for the reasons stated by the Court in its letter opinion of August 25, 2017 (such ruling from the bench and such letter opinion are incorporated herein by reference), the Court hereby **ADJUDGES, ORDERS** and **DECREES** as follows:

1. CM's Motion for Summary Judgment is **DENIED**.
2. Defendants' Motion for Partial Summary Judgment is **GRANTED, IN PART, AND DENIED, IN PART**. Defendants' Motion for Partial Summary Judgment is granted as to Counts I, II, IV and VI of CM's First Amended Complaint. Counts I, II, IV and VI of CM's First Amended Complaint are dismissed, with prejudice.

3. The Court further **GRANTS, IN PART, AND DENIES, IN PART**, Defendants' Motion for Partial Summary Judgment as to Count III of CM's First Amended Complaint. The June 17, 2011 letter agreement attached to CM's First Amended Complaint as Exhibit B (the "2011 Agreement") between LFRE and CM is silent on how the parties intended to credit CM for the value of "exceptions." Accordingly, the value of "exceptions" referenced in Section 1.e. of the 2011 Agreement is not, as a matter of law, included in the calculation of the performance fee payment outlined in the 2011 Agreement. Likewise, the parties never "mutually agreed" on "[a]ny other... additional or modified recoveries as components of the commission plans" under Section 1.d.iv. of the 2011 Agreement. In the absence of an agreement, those fees cannot, as a matter of law, be included in the calculation of the performance fee payment outlined in the 2011 Agreement and the categories of fees included in such calculation are only the three fees identified in the 2011 Agreement, namely Plan Based Fees, 100% Fee Income, and Associate Fee Income-Miller. ^{A JMT} ~~The sole~~ factual issue for trial is whether the LFRE profit and loss statements accurately reflect the three categories of fees listed in Sections 1.d.i., 1.d.ii. and 1.d.iii. of the 2011 Agreement. Defendants' Motion for Partial Summary Judgment on Count III is **GRANTED** as to these issues. Defendants' Motion for Partial Summary Judgment is **DENIED** on Count III as to the Defendants' argument that Sections 1.d.iv. and 1.e.iii. are an unenforceable agreement to agree. The Court notes LFRE's timely objection to this ruling.
4. Based on CM's counsel's representation at the hearing, the parties **STIPULATE AND AGREE** that, based on a decline in LFRE's "Company Dollar Percentage," as defined in the 2011 Agreement, from 2009 to 2010, no performance fee payment for year the 2010 was or is due to or earned by CM. The first performance fee payment CM would have

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A second factual issue is whether the Gross Revenues and Agent Earnings were accurately reported consistent with LFRE's then accounting practice

been eligible to receive, based on any improvement to LFRE's "Company Dollar Percentage," as defined in the 2011 Agreement, would have been for the year 2011, payable by March 31, 2012. LFRE denies that CM earned a performance fee payment for year 2011, or for any subsequent year referenced in the 2011 Agreement.

5. The Court having sustained the Defendants' Motion for Partial Summary Judgment as to all counts alleged against LFC, LFC is hereby dismissed as a defendant, and the style of the case upon entry of this Order shall be: CompensationMaster, LLC v. Long & Foster Real Estate, Inc.

The Clerk shall certify a copy of this Order to all counsel of record. And this cause is continued.

Enter this 13th day of September, 2017.

John M. Tinn

CIRCUIT COURT JUDGE

SEEN AND _____:

Endorsement waived per Rule 1:13

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SEEN, PRESERVING ALL ARGUMENTS AND OBJECTIONS MADE ON THE RECORD:

Endorsement written for Rule 1:13

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