

Commission Refund after Cancelation of a Deal

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What do the honorable scholars say about this issue? I facilitated a flat's deal between two parties and received my commission. Now, the buyer has found another flat more suitable for him and wants to cancel this deal, and the seller also agrees since he has another party willing to buy for a higher price. In this case, do I have to return the commission?

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
الجواب بعون الملك الوهاب اللهم هداية الحق والصواب

In the real estate sector, brokers work in two ways:

1. The first type of broker is one who works solely to complete the deal between two parties through effort and labor. The post-deal matters, such as payment, transfer of documents, and other issues, are handled directly by the parties themselves.
2. The second type of broker is responsible for all matters, from arranging the deal to handling the post-deal matters like payment, document transfer, and all other related issues.

In the asked situation, if your work was only to complete the deal between the two parties and you were not responsible for the other matters such as payment and document transfer, the commission you received for

completing the deal will not be refunded even though the deal has been canceled by the parties. The commission was paid for your role in completing the deal, and since you have completed that task, there is no reason to return the commission even though the deal is canceled by the mutual consent of two parties.

However, if your responsibility also included handling payment, document transfer, and other matters along with the completion of the deal but because of the cancellation of the deal you were unable to complete some of the tasks so you are entitled to the commission of only accomplished tasks as per the market rate for them. It is incumbent upon you to refund the remainder of the commission.

The ruling in Fatawa Qazi Khan regarding the commission of completed but later canceled deal has been mentioned as follows:

”دلال باع شيئاً وأخذ الدلالة ثم اسحق المبيع على المشتري أو رد بعيب بقضاء أو غيره لا يسترد الدلالة وإن
انفسخ البيع لأنه وإن انفسخ لا يظهر أن البيع لم يكن فلا يبطل عمله-“

Translation: After a broker has sold something and taken his commission, an individual turns up and claims to be the owner of the subject of the sale and the subject of the sale is returned whether with or without the verdict of a Qazi, the broker's commission will not be returned even if the deal is cancelled. This is because the cancelation of deal does not mean that deal did not complete and broker's efforts went useless.

(Fatawa Qazi Khan, Volume 02, Page 293, Quetta)

The book Durarul-Hukkam Sharh Majallah-tul-Ahkam while mentioning the rulings regarding a scenario where a broker has completed a task and regarding a deal which has been cancelled and the broker has received the commission and regarding some other scenarios, says:

”لو ظهر مستحق بعد أخذ الدلال أجرته وضبط المبيع أو رد بعيب لا تسترد أجره الدلال --- لو ظهر مستحق للمبيع بعد أن باعه الدلال وأخذ دلالته وضبطه المستحق بحكم الحاكم أو بغير حكم أو رد بعيب أو إقالة أو فسخ أو بسبب آخر من الأسباب لا تسترد أجره الدلال لأن الدلالة أجره عمل الدلال ومتى تم العمل وأخذت الأجرة، فلا تسترد حتى أنه لو لم تكن قد أعطيت الأجرة للدلال لزم إعطاؤها له.“

Translation: If, after a broker has taken his commission and a claimant shows up and confiscates the subject of the sale or due to a defect subject of sale is returned, the broker's commission will not be refunded. Moreover, if a claimant shows up and the subject of the sale is given to him with or without the verdict of a Qazi or the subject is returned due to a defect or Iqalah (i.e. negotiated rescission) or cancellation of the deal or due to any other reason, the broker's commission will not be refunded. Because commission is given against the completion of a task. And as he has completed that task and has received his commission, it will not be refunded. Rather it will be incumbent (upon the concerned party) to pay the commission if it has not been paid yet.

(Durarul-Hukkam Sharh Majallah-tul-Ahkam,
Volume 01, Page 565, Beirut)

In Al-Uqoodud-Durriyyah fi Tanqihil-Fatawa al-Hamidiya, a question and its answer is mentioned as follows:

”في دلال سعى بين البائع والمشتري وباع البائع المبيع بنفسه والعرف أن الدلالة على البائع ثم إن المشتري رد المبيع على البائع قام البائع يطالب الدلال بالدلالة التي دفعها له فهل ليس له ذلك؟ (الجواب): نعم ذكر في الصغرى دلال باع ثوبا وأخذ الدلالة ثم استحق المبيع أو رد بعيب بقضاء أو غيره لا تسترد الدلالة وإن انفسخ البيع؛ لأنه لم يظهر أن البيع لم يكن فلا يبطل عمله-“

Translation: “Question: A broker facilitates a sale and the seller himself sells and according to practice the commission is paid by the seller (and he has paid him) then the buyer returns the subject of the sale to the seller now if that seller demands the return of the commission from the broker, does he has a right to do so? Answer: it has been mentioned in the book Sughra that if a broker sells a fabric and receives his commission but later on a claimant is given the subject of the sale or it is returned due to a defect with or without the verdict of a Qazi, in all these situations his commission will not be refunded even though the deal has been cancelled. Because the cancellation does not mean that the sale did not take place therefore the work of broker did not go in vain.

(Al-Uqoodud-Durriyyah fi Tanqihil-Fatawa al-Hamidiya, Volume 01, Page 247, Published by Dar al-Ma'rifah)

A broker falls in the category of common employee (الاجير المشترك), and such an employee is entitled to the payment for the work he has done. As stated in Al-Bahr-ur-Raiq:

”يجب الأجر البعض لكونه مسلماً إلى المستأجر“

Translation: The wage is due (واجب) for the part of the task completed, as the completed task is handed over to the employer.

(Al-Bahr-ur-Raiq, Volume 07, Page 301, Beirut)

Similarly, in Bahar-e-Shariat, Mufti Amjad Ali Azmi (رحمة الله عليه) writes:

”مزدور دیوار بنا رہا ہے، کچھ بنانے کے بعد گر گئی تو جتنی بنا چکا ہے، اس کی اجرت واجب ہو گئی۔

Translation: If a worker builds a wall, and he constructs some of it but it falls, then in this case, he is still entitled to payment for the work he has completed before the wall fell.

(Bahar-e-Shari'at, Volume 03, Page 115, Maktabah al-Madina)

والله اعلم عز وجل ورسوله اعلم صلى الله تعالى عليه وآله وسلم

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