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## Feeling Misled on Home Price, Buyers Sue Agent

By DAVID STREITFELD

Correction Appended

CARLSBAD, Calif. — Marty Ummel feels she paid too much for her house. So do millions of other people who bought at the peak of the housing boom.

What makes Ms. Ummel different is that she is suing her agent, saying it was all his fault.

Ms. Ummel claims that the agent hid the information that similar homes in the neighborhood were selling for less because he feared she would back out and he would lose his \$30,000 commission.

Real estate lawyers and brokers say the case, which goes to trial in the north county division of San Diego Superior Court on Monday, is likely to be the first of many in which regretful or resentful buyers seek redress from the agents who found them a home and arranged its purchase.

“When your house appreciates \$100,000 in the first six months, you’re not quite as concerned that maybe the valuation was \$25,000 or \$50,000 off,” said Clifford Horner of the law firm Horner & Singer. “But when your house goes down, you ask: ‘Who might have led me astray here?’ ”

Agents representing buyers rarely had the opportunity to make mistakes during the last real estate boom, in the late 1980s, because the job hardly existed then. For decades, residential transactions almost always involved brokers who, whatever assistance they gave the buyer, legally represented only the seller.

The long boom that began in the late 1990s put an end to that one-sided world. As prices spiked, buyer’s agents and brokers became popular as sounding boards, advisers and negotiators. The National Association of Realtors estimates they are now involved in two-thirds of all residential purchases.

That makes this the first housing collapse in which large numbers of buyers had a real estate professional explicitly looking after their interests. The Ummel case poses the question: In a relationship built on trust, where promises are rarely written down and where — as in this case — there is no signed contract, what are the exact obligations of these representatives in guiding their clients through a sizzling market?

“Agents have a lot of fiduciary duties, but they don’t make money unless they close the sale,” said Joel

Ruben, a real estate lawyer in Manhattan Beach, Calif. "In an inflated market, there are built-in temptations to cut corners."

The defendant in the Ummel case is Mike Little, a veteran agent with ReMax Associates. He will argue that Marty Ummel, who brought the case with her husband, Vernon, is trying to shift the blame for the couple's own failures of research and due diligence.

"They simply didn't do what is expected of a knowledgeable, sophisticated buyer, and are now looking for someone other than themselves to take responsibility," Roger Holtsclaw, an agent who was hired by Mr. Little as an expert witness, said in a court deposition.

Ms. Ummel is 60; Mr. Ummel, 71. With retirement on the horizon, they decided in late 2004 to move from the San Francisco Bay area to San Diego, where they would be near their grown children.

Since they were not making the move for job reasons, they decided to take their time and focus on finding a house that was a good value. In a boom, that is no simple task for buyer or agent.

It is clear the Ummels did not rush into a decision: They dismissed one agent and canceled deals on two houses before Mr. Little found them a prospect on a cul-de-sac in a five-year-old luxury development. A deal was struck with the owner, herself a real estate agent, for \$1.2 million.

Mr. Little also worked as a mortgage broker. The Ummels say he encouraged them to get their loan through him. Mr. Little ordered an appraisal of the house but did not respond to the couple's requests to see it, the suit charges.

A few days after the couple moved in, in August 2005, they got a flier on their door from another realty agent. It showed a house up the street had just sold for \$105,000 less than theirs, even though it was the same size.

Then they finally got their appraisal, which told them the house up the street was not only cheaper but had a pool. Another flier in early October mentioned a house down the street that was the same size and closed the same day as the Ummels' but went for \$175,000 less.

The Ummels accuse Mr. Little not only of withholding information but of exaggerating the virtues of their house to push them into a deal.

Ms. Ummel said in her deposition that Mr. Little had told them "many times that it was a very good buy."

"And you believed that?" asked David Bright, the lawyer who represents both Mr. Little and ReMax Associates, which was also named in the suit.

"Yes, we trusted Mike Little," Ms. Ummel replied.

Mr. Horner, the lawyer, said valuation is a tricky area for brokers.

“Brokers aren’t appraisers,” said Mr. Horner, one of the writers of a guide to suing brokers. “They have no obligation to opine about value. But once they do, it becomes a gray area whether it’s puffery or a misstatement of a known fact.”

Most people who made a bad real estate deal might wince and move on, but people who know Ms. Ummel describe her as unusually determined. She spent a year picketing ReMax offices on weekends.

Mr. Ummel, an administrator at Dominican University, gave her his permission to pursue the case, on one condition: “Don’t tell me how much the legal fees are.” So far, the bills come to \$75,000, more than Ms. Ummel’s annual salary as a fund-raiser at California State University in San Marcos.

“I do not think I’m obsessive-compulsive, but I am 114 pounds of absolute perseverance,” Ms. Ummel said.

That persistence has put the Ummels at the forefront of a developing legal question. When buyers have sued their agents in the past, the cases focused on problems with the property itself, often alleging failure by the broker to disclose a known hazard or maintenance issue. After reviewing litigation records for the last five years, the National Association of Realtors could find no cases that revolved solely around the question of valuation.

Ms. Ummel’s original suit included the appraiser, who was accused of skewing his report to make the Ummel’s house seem worth the purchase price, and the mortgage broker. Modest settlements have been reached with both.

In a brief phone interview, Mr. Little called the case “ridiculous,” adding: “The lady’s a nut job. I didn’t do anything wrong.”

Mr. Little said that contrary to Ms. Ummel’s claims, the suit was motivated mainly by the declining market. “When people see their home values and assets declining, they always feel there’s someone to blame,” he said. “This is a dangerous time for all of us in the industry.”

The agent declined several requests to expand on his remarks. His lawyer declined to be interviewed. So did Geoff Mountain, a co-owner of ReMax Associates, which owns the office that the Ummels were dealing with.

Both sides have hired appraisers who have combed the surrounding development. Mr. Little’s appraiser concluded the four-bedroom, 3.5-bath house was worth \$1,150,000 to \$1.2 million in the summer of 2005. The Ummels’ appraiser said it was worth \$1,050,000.

The outlines of Mr. Little’s defense can be seen in his lawyer’s lengthy deposition of the Ummels. Even in a relatively new development, Mr. Bright said, no two houses and no two deals can be seen as identical. For

instance, a pool does not necessarily add value because “some buyers like it, some don’t.”

Mr. Little never showed the Ummels the house down the street because the backyard could be viewed from other houses, the lawyer said, and the couple had said they valued their privacy. Ms. Ummel disputes saying this.

The agent who left the flier that led to the case, Margaret Hokkanen, is sympathetic to Mr. Little.

“People are responsible for their own decisions,” said Ms. Hokkanen, who has been subpoenaed as a defense witness.

Her husband and partner, John Hokkanen, is more ambivalent.

“We have seen so much misrepresentation over the last five years,” he said. “So I appreciate where these buyers might be coming from: ‘I’m a lowly consumer, you’re certified by the state of California, you didn’t do X, you didn’t do Y, and I got hurt.’ ”

The Ummels may be on the leading edge of the law, but they are unlikely to be alone for long. With the market falling, many homeowners owe more on their mortgages than their houses are worth. And many of those deals involved brokers who are required to carry professional liability insurance, presenting a tempting target for angry buyers.

“If you put someone into a property at the top of the market, you look really bad if it goes down,” said K. P. Dean Harper, a real estate lawyer in Walnut Creek, Calif. “There are a lot of letters going out from lawyers to real estate agents saying, ‘My client would never have purchased if you had properly evaluated the market conditions and the value of the property.’ ”

Correction: January 24, 2008

A front-page article on Tuesday about a California homeowner who is suing a real estate agent, claiming she was sold an overpriced house, misidentified the court in which the case is being heard. It is the north county division of San Diego Superior Court, not North County Superior Court.

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