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**Date:** March 25, 2009  
**To:** All Clients and Friends  
**From:** Cliff Bernstein  
**Re:** Recent Cases of Interest

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**NEW YORK  
RECENT CASES OF INTEREST FOR REAL ESTATE LAWYERS**

**Zere Real Estate Services, Inc. v. Adamag Realty Corp.**

**3/10/2009**

**Second Department**

**Real Property Law; Trials; Brokerage Commissions; Contracts; Express and Implied**

Plaintiff, a commercial real estate agency, brought an action to recover a commission under either an express or implied contract. At trial, in support of its claim of an express contract, the plaintiff's principal owner testified that the parties agreed only that the commission for a completed sale would be "no more than 5 percent," while a principal of the defendant testified that the parties agreed that they would negotiate a commission rate of no more than 5%, depending upon the deal. Undisputed was that any agreement was nonexclusive and of no specific duration. Plaintiff also contended that an implied contract was created on evidence that it marketed defendants' property and contacted potential buyers, although a sale was not consummated from its efforts. A jury verdict for the defendants ensued. Judgment is affirmed. To recover a real estate brokerage commission, the broker must establish: "(1) that he or she is duly licensed; (2) that he or she had a contract, express or implied, with the party to be charged with paying the commission; and (3) that he or she was the procuring cause of the sale." Here, there was sufficient evidence for the jury to find that there was no express contract, as the parties merely entered into an "agreement to agree," and that no implied contract was created by plaintiff's efforts to sell the property, because their efforts did not result in the transaction that did occur. *Zere Real Estate Services, Inc. v. Adamag Realty Corp.* Decided 3/10/09.

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