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## Court upholds dismissal of commission lawsuit



*Ronald Rosenberg / Photo by Bob Giglione*

The Appellate Division of New York State Supreme Court has unanimously affirmed a 2013 ruling that dismissed a real estate broker's lawsuit seeking \$7.2 million in commission from the reacquisition of a group of assisted living facilities.

Uniondale-based Excel Realty Advisors filed the lawsuit in September 2012 in an attempt to recover commission it claimed to be owed for its role in Engel Burman Group's \$318 million reacquisition of several Bristol assisted living facilities.

The suit contended that Irwin Dochter, Excel's managing partner, was employed by Garden City-based Engel Burman as its "broker and consultant to procure a joint venture partner to invest with it in the purchase and/or financing and/or management and/or development of assisted-living projects" and was owed more than \$6 million.

But Nassau County Supreme Court Judge Timothy Driscoll dismissed the suit in June 2013 and ruled that an alleged broker agreement never existed.

Engel Burman and equity partner Harrison Street Real Estate Capital in Chicago paid about \$290 million to Toronto-based Chartwells Seniors Housing Real Estate Investment Trust and ING Australia for five Long Island Bristals they owned together and ING got \$28 million for one it owned separately.

The Bristals in East Meadow, East Northport, Lynbrook, North Hills, North Woodmere, Westbury and Massapequa were sold by Engel Burman for \$320 million in 2007.

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The Appellate Division decision held that "in order to be entitled to recover a broker's commission, a real estate broker must establish, among other things, that it was the 'procuring cause of the sale'" and noted that Excel failed to provide evidence to establish this fact, warranting dismissal of their claims.

Attorney Ronald Rosenberg of Garden City law firm Rosenberg Calica & Birney, which represents Engel Burman, said in a written statement that Justice Driscoll correctly ruled that the evidence submitted was contrary to and did not support the broker's claims for a commission and appropriately dismissed its claims.

"The Appellate Division unanimously upheld that decision and by doing so has reaffirmed the rule of law that governs the relationship between brokers and real property owners and developers," Rosenberg said in the statement.