

TUESDAY, NOVEMBER 16, 2010
11:00 A.M.

NO. 3

#25619

GARRY NEIDERWORDER,
Plaintiff,

and

ROBERT LEONARD,
Plaintiff and Appellee,

vs.

STATE OF SOUTH DAKOTA, ex rel
SOUTH DAKOTA REAL ESTATE
COMMISSION,
Defendant and Appellant.

Ms. Lindsey Riter-Rapp
Mr. Robert C. Riter, Jr.
Riter, Rogers, Wattier & Brown, LLP
Attorneys at Law
PO Box 280
Pierre SD 57501-0280
Ph: 224-5825

(FOR APPELLANT)

Ms. Heather M. Lammers Bogard
Costello, Porter, Hill,
Heisterkamp, Bushnell & Carpenter
Attorneys at Law
PO Box 290
Rapid City SD 57709-0290
Ph: 343-2410

(FOR APPELLEE LEONARD)

The Honorable A. Peter Fuller
Seventh Judicial Circuit
Pennington County

(CIV 09-1921)

STATEMENT OF LEGAL ISSUES

- 1) WHETHER THE CIRCUIT COURT ERRED AS A MATTER OF LAW IN ITS DETERMINATION THAT LEONARD WAS NOT REQUIRED TO OBTAIN A NEW WRITTEN AGENCY AGREEMENT WITH WESTERN DESPITE THE STATUTORY MANDATES THEREFOR.

The circuit court concluded that the commission erred in its' determination that Leonard was required to maintain an agency agreement executed by the customer he was representing.

Saiz v. Horn, 2003 S.D. 94, ¶12, 668 N.W. 2d 332

Opperman v. Heritage Mut. Ins. Co., 1997 SD 85, 566 NW 2d 487, 490

SDCL 36-21A-1(2)

SDCL 36-21A-140

- 2) WHETHER THE CIRCUIT COURT ERRED WHEN IT CONCLUDED THAT THE FINES AND COSTS SHOULD NOT BE ASSESSED AGAINST LEONARD.

The circuit court concluded the Commission erred by imposing a fine and recovering its costs.

SDCL 1-26-29.1