

NJ Supreme Court Relaxes Method for Disapproving Real Estate Contracts During 3-Day Attorney Review

by Leonard S. dePalma, Esq.

In Conley v. Guerrero, 228 N.J. 339 (2017) the New Jersey Supreme Court eased the methods by which a party to a real estate contract may declare a Contract disapproved during the Three-Day Attorney Review Period.

Before discussing the details of this new decision, we will review some legal history relating to the 3-Day Attorney Review.

The Settlement: 3-Day Attorney Review

In 1982, the NJ State Bar Association filed a suit against the New Jersey Ass'n of Realtor Boards seeking a ruling that licensed real estate brokers or salespersons engage in the unauthorized practice of law when they prepare contracts for the sale or lease of property. The Court reviewed the final consent judgment upon joint application of the parties under its constitutional powers governing the practice of law. New Jersey State Bar Ass'n v. New Jersey Ass'n of Realtor Boards (Bar Ass'n), 93 N.J. 470, 476-77, 461 A.2d 1112, modified, 94 N.J. 449, 467 A.2d 577 (1983), and N.J.A.C. 11:5-6.2(g)(2).

After several settlement attempts and two public hearings, the parties reached a final agreement. Id. at 393-96. Under the proposed final settlement, real estate brokers were allowed to prepare real estate contracts, provided they include an attorney-review clause that (1) gives the parties' respective attorneys three days to review the contract and (2) requires an attorney to notify the broker of disapproval within the three-day review period. Id. at 395.



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The trial court found that

[t]he proposed settlement [accommodates] the interests of realtors and attorneys by allowing the realtor to consummate the contract phase of the transaction, with attorneys handling the actual transfer of title. Most importantly, however, it serves to protect the public interest by making the contract subject to prompt attorney review if either buyer or seller so desires. Id. at 396.

N.J.A.C. 11:5-6.2(g) requires every contract for the sale of certain real estate to contain the following language within its attorney-review clause:

3. Notice of Disapproval. If an attorney for the Buyer or the Seller reviews and disapproves of this contract, the attorney must notify the Broker(s) and the other party named in this contract within

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"There is no substitute for talent. Industry and all the virtues are of no avail."

- Aldous Huxley

"The luck of having talent is not enough; one must also have a talent for luck."

- Hector Belioz

"Everyone has a talent. What is rare is the courage to follow the talent to the dark places where it leads."

- Erica Jong

3-Day Attorney Review

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the three-day period. Otherwise this contract will be legally binding as written. **The attorney must send the notice of disapproval to the Broker(s) by certified mail, by telegram, or by delivering it personally.** The telegram or certified letter will be effective upon sending. The personal delivery will be effective upon delivery to the Broker's office. The attorney may but need not also inform the Broker(s) of any suggested revisions in the contract that would make it satisfactory. (emphasis ours)

Facts of the Case

Returning to the recent decision in Conley v. Guerrero, 228 N.J. 339 (2017), the pertinent facts were as follows. On January 12, 2014, Buyers signed a contract to purchase a condominium from Seller. Weichert Realtors was the Listing and Selling Broker on this transaction, and a real estate agent from Weichert acted as a dual agent for the parties. The agent prepared, and the parties used, a standard form real estate contract. Seller signed the contract on January 14, 2014, and the executed agreement was delivered the next day. Both the offer and acceptance were transmitted via e-mail and/or fax.

The agreement included an attorney-review clause, mandated by Bar Ass'n and N.J.A.C. 11:5-6.2(g)(2), which gave the parties' respective attorneys three business days to review the contract before it became legally binding. If Buyers' or Seller's attorney disapproved the contract, the clause required that he or she notify the "REALTOR(S) and the other party . . . within the three-day period."

A bidding war began on the same day that the attorney-review period commenced, and Buyers were informed that higher offers were submitted for the property. In response, Buyers increased their offer amount and implored Seller to agree to the sale. The next day, however, Seller accepted a higher bid from defendants Michele Tanzi and Brian Kraminitz (Tanzi).

The day before the attorney-review period expired, Seller's attorney e-mailed and faxed a letter to Buyers' attorney disapproving the contract. The dual real estate agent was copied on the e-mail. Nevertheless, after the deadline passed, Buyers' attorney e-mailed a letter to the

agent, and faxed Seller's attorney a copy, stating that "the 3 days within which an attorney may terminate this contract ha[ve] expired. The contract is now in full force and effect."

Buyers then filed a breach-of-contract complaint in the Superior Court, Law Division, against Seller and Tanzi (collectively, defendants), demanding specific performance and requesting a temporary restraining order to enjoin the sale of the condominium to anyone other than Buyers. Buyers argued that "no attorney notified any realtor involved in the transaction by certified mail, by telegram or by personal delivery as is required if the contract was disapproved."



Consequently, Buyers claimed that because the three-day period within which notification must have been communicated had passed, and neither Buyers, their attorney, nor their agent received proper notification of disapproval, "the contract became effective."

Both parties filed cross motions for summary judgment before the trial court because the facts were "largely uncontroverted." The court granted defendants' motion for summary judgment and dismissed Buyers' complaint. Buyers appealed, and the Appellate Division affirmed the trial court's decision. Conley v. Guerrero, 443 N.J. Super. 62, 68 (App. Div. 2015). The panel found that the agreement detailed the method of delivering a notice of disapproval to the real estate agent only; any form of actual notice to Buyers was sufficient; and Buyers' right to notice of disapproval was satisfied here. Id. at 68-69.

In Conley the NJ Supreme Court affirmed the Appellate Division with modifications, and ruled, because Buyers received actual notice of disapproval within the three-day attorney-review period by a method of communication commonly used in the industry, the notice of disapproval was valid. The Court also exercised its constitutional authority over the practice of law and found that an attorney's notice of disapproval of a real estate contract may be transmitted by fax, e-mail, personal delivery, or overnight mail with proof of delivery. Notice by overnight mail will be effective upon mailing. The attorney-review period within which this notice must be sent remained three business days.