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Court of Appeals
Richmond, Va.

Record No. 7277

In the
Supreme Court of Appeals of Virginia
at Richmond

E. KEMPER BEARD, TRUSTEE, ET AL.

v.

THOMAS L. POE, t/a, etc.

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 7277

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 17th day of June, 1969.

E. KEMPER BEARD, TRUSTEE: E. KEMPER BEARD; ROBERT ALLEN, EUGENE FORMAN; WILLIAM A. NAGEL; WILLIAM CHAMPION; R. M. LEIGH AND HAROLD UMSTADTER, Plaintiffs in error,

against

THOMAS L. POE, T/A VIRGINIA LAND COMPANY OF NORTHERN VIRGINIA, Defendant in error.

From the Circuit Court of Fairfax County
James Keith, Judge

Upon the petition of E. Kemper Beard, Trustee; E. Kemper Beard; Robert Allen; Eugene Forman; William A. Nagel; William Champion; R. M. Leigh and Harold Umstadter a writ of error is awarded them to a judgment rendered by the Circuit Court of Fairfax County on the 26th day of December, 1968, in a certain motion for judgment then therein depending, wherein Thomas L. Poe, t/a Virginia Land Company of Northern Virginia, was plaintiff and the petitioners were defendants; upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of $300, with condition as the law directs.

RECORD

* * * * *

page 1 }

* * * * *

MOTION FOR JUDGMENT

Comes now your Plaintiff, Thomas L. Poe, T/A Virginia Land Company, and in and for his Motion for Judgment says as follows:

1. That Thomas L. Poe, T/A Virginia Land Company, is a duly licensed real estate broker and was so licensed at all times hereinafter mentioned.

2. That on or about January 5, 1967, the defendant was the owner of a certain parcel of land containing 194,701 square feet, more or less, and lying on the easterly side of Prosperity Lane and on the southerly side of Lee Highway, Fairfax County, Virginia.

3. That on or about that same date Defendant entered into an agency contract with the Plaintiff, whereby the Plaintiff was to act as agent in procuring a buyer for the tract aforesaid on certain terms more specifically set out in the agency contract which is attached hereto and by this reference made a part hereof.

4. That thereafter Plaintiff performed certain services and incurred certain expenses pursuant to his duties under the contract aforesaid, including advertising said property in newspapers of general circulation, construction and erection of a large sign on the property of Defendant and numerous other services.

5. That on or about March 30, 1967 Plaintiff was contacted by representatives of the United States Post Office Department; said contact having been occasioned solely by the services of the Plaintiff.

page 2 } 6. That on or about March 30, 1967, an option was executed by Defendant for the purchase of the said property by the United States Post Office Department; a copy of said option being attached herewith and by this reference made a part hereof.

7. That prior to the execution of this option, Defendant entered into and executed a commission agreement, whereby the said Defendant acknowledged the services of Plaintiff

as being solely instrumental in producing the buyer, and agreeing to pay the commission as agreed in the agency contract entered into on January 5, 1967, aforesaid; a copy of said commission agreement is attached hereto and by this reference made a part hereof.

8. That thereafter Plaintiff continued to diligently perform services as agent so as to effectuate a contract between the parties aforesaid.

9. That on June 14, 1967, unknown to your Plaintiff, the United States Post Office Department and the Defendant entered into a contract whereby the United States Post Office Department was to buy the said land from Defendant for the sum of $225,000.00; said contract did not provide for a commission to Plaintiff.

10. That prior to settlement both parties to the contract were notified and demand made upon Defendant and the United States Post Office Department to abide by and honor the contracts of agency theretofore entered into; that said demand has been wholly ignored.

11. That on or about July 25, 1967, the Defendant and the United States Post Office Department *consumated* the sale of the property of Defendant, and have since refused and failed to pay Plaintiff the commission aforesaid.

12. That at all times mentioned herein the Plaintiff was ready, willing and able to continue and conduct negotiations and in fact, did so continue until such time as Defendant and the United States Post Office Department did fraudulently and wrongfully act to deprive Plaintiff of their rightful commission.

page 3 } WHEREFORE, the premises considered, your Plaintiff has been injured in the sum of $24,337.60 by reason of the wrongful acts of the defendant and prays judgment, therefore, plus interest from July 25, 1967.

Thomas L. Poe

Filed in Circuit Court Clerk's Office Jul 28 1967.
Thomas P. Chapman, Jr., Clerk, Fairfax County, Va.

* * * * *

page 19 }

* * * * *

ANSWER TO MOTION FOR *JUDGEMENT*

E. Kemper Beard, Trustee, Defendant, answers the Motion for Judgment filed herein as follows:

(1) Strict proof is required of the allegations of Paragraph 1.

(2) The allegations of Paragraph 2 are admitted.

(3) The allegation of Paragraph 3 is admitted.

(4) The Defendant is without knowledge of the allegations of Paragraphs 4 and 5 and demands strict proof thereof.

(5) The allegation of Paragraph 6 is admitted.

(6) The allegation of Paragraph 7 that prior to the execution of the option the Defendant executed a commission agreement is admitted. In further answer to the allegations of Paragraph 7, the Defendant says that said agreement speaks for itself and denies that he thereby agreed to pay "the commission as agreed in the agency contract entered into on January 5, 1967".

(7) The allegations of Paragraph 8 are denied.

(8) The allegations of Paragraph 9 to the extent that on June 14, 1967 the United States Post Office Department contracted to buy the said land from this Defendant for the sum of $225,000.00 are admitted. This Defendant is without information as to the allegation that the Plaintiff knew nothing of the contract. The allegation that the contract did not provide for a commission to Plaintiff is admitted.

page 20 } (9) This Defendant admits that prior to settlement of said contract the Plaintiff demanded a commission of him. This Defendant is without knowledge of any demand made upon the United States Post Office Department by the Plaintiff for a commission, and is without knowledge of any contract of agency between the Plaintiff and the United States Post Office Department. If said allegations are material, strict proof is required. This Defendant admits that the demand of Plaintiff for payment of a commission has been refused.

(10) The allegations of Paragraph 11 that on July 25, 1967 the contract of sale was consummated, and the allegation that Plaintiff since then has refused to pay the commission are admitted. This Defendant is without knowledge of any action taken by the United States Post Office Department

relative to a payment to the Plaintiff. If allegation is material strict proof is desired.

(11) The allegations of Paragraph 12 are denied.

(12) This Defendant affirmatively avers that the option contract between this Defendant and the United States Post Office Department filed with the Motion for Judgment herein was not exercised by the United States Post Office Department, that the Plaintiff ceased and abandoned efforts to negotiate a contract of sale between the Defendant and the United States Post Office Department after the expiration of said option, that the Plaintiff was not the procuring cause of the contract of sale made by the Defendant with the United States Post Office Department, and is not entitled to a commission from the Defendant.

WHEREFORE, having fully answered the allegations of the Motion For Judgment, the Defendant E. Kemper Beard prays that it be dismissed with costs assessed against the Plaintiff.

E. Kemper Beard, Trustee
By Counsel

Filed Aug 18 1967.

Thomas P. Chapman, Jr., Clerk of the Circuit Court of Fairfax County, Va.

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page 25 }

* * * * *

ORDER

This cause came on for hearing this 1st day of September, 1967, upon the papers formerly read and upon the Motion of Plaintiff to amend the Motion for Judgment heretofore filed by adding thereto as parties Defendant certain persons who are members of a Joint Venture known as the Merrifield Joint Venture; and,

WHEREFORE, the Court having fully considered this matter and being of the opinion that the Motion is in all respects proper, it is, therefore,

ADJUDGED, ORDERED and DECREED, that the Motion for Judgment be and it hereby is amended in the following particulars:

1. That the following persons are added as parties Defendant:

a. Robert Allen
4007 Braddock Road
Alexandria, Virginia
b. Eugene Forman
2945 Rosemary Lane
Fairfax, Virginia
c. William A. Nagel
308 Dominion Road, N. E.
Vienna, Virginia
d. William Champion
6212 Wilson Boulevard
Falls Church, Virginia
e. E. Kemper Beard
2363 Hunter Mill Road
Vienna, Virginia
f. R. M. Leight
10310 Vale Road
Vienna, Virginia
g. Harold Umstadter
P. O. Box 160
R.F.D. #1
Charlottesville, Virginia
T/A Merrifield Joint Venture

page 26 } 2. That paragraph 2 is amended in the following manner:

"That on or about January 5, 1967, the Defendants were the members of a joint venture organized for the purpose of purchasing, developing, and leasing and selling a certain parcel of land containing 194,701 square feet, more or less, and lying on the easterly side of Prosperity Lane and on the southerly side of Lee Highway, Fairfax County, Virginia; that the record title to the said tract was held by E. Kemper Beard as Trustee for Merrifield Properties."

3. That paragraph 3 is amended in the following manner:
That the words "Defendant" are amended to read "Defendants" plural.

And it is further, ADJUDGED, ORDERED and DECREED that the persons heretofore added as parties De-

fendant be served with process and are hereby given twenty-one (21) days from this date to answer or enter other pleadings.

ENTERED this 10th day of October, 1967.

Arthur W. Sinclair, Judge

* * * * *

page 27 }

* * * * *

ANSWER

(1) The Defendants, Robert Allen, Eugene Forman, William A. Nagel, William Champion, E. Kemper Beard, R. M. Leight, and Harold Umstadter, added as parties Defendant by an Order entered herein, adopt as their own the Answer heretofore filed in behalf of E. Kemper Beard, Trustee.

(2) These Defendants and E. Kemper Beard, Trustee, admit that on or about January 5, 1967 the individual Defendants were members of a joint venture organized for the purpose of purchasing, developing, leasing, selling or otherwise dealing with a certain parcel of land containing 194,701 square feet more or less, lying on the easterly side of Prosperity Lane and on the southerly side of Lee Highway in Fairfax County, Virginia, record title to which was held by E. Kemper Beard, Trustee.

WHEREFORE, having fully answered, these Defendants pray that they be dismissed with costs assessed against the Plaintiff.

E. Kemper Beard, Trustee
Robert Allen
Eugene Forman
William A. Nagel
William Champion
E. Kemper Beard
R. M. Leight
Harold Umstadter

By: R. J. Lillard, Counsel

* * * * *

Filed Oct 18 1967.

Thomas P. Chapman, Jr., Clerk of the Circuit Court of Fairfax County, Va.

* * * * *

page 35 }

* * * * *

FINAL ORDER

THIS MATTER came on for hearing on the merits this 4th day of December, 1968, the parties hereto appearing in person and by Counsel, and upon consideration of the pleadings heretofore filed in this matter, the testimony of the parties hereto, the depositions of witnesses, the exhibits filed, authorities submitted by Counsel and upon argument by Counsel, and wherefore:

THIS COURT is of the opinion that the Plaintiff, Thomas L. Poe, is entitled to recover judgment against the Defendants, E. Kemper Beard, Trustee, Robert Allen, Eugene Forman, William A. Nagel, E. Kemper Beard, William Champion, R. M. Leigh and Harold Umstadter, T/A Merrifield Joint Venture, in the sum of Twenty-Two Thousand Five Hundred Dollars ($22,500.00) together with interest from the 25th day of July, 1967; and

IS FURTHER of the opinion that the Motion of the Plaintiff by Counsel to amend the fictitious name of the Plaintiff, Thomas L. Poe, from Virginia Land Company to Virginia Land Company of Northern Virginia is proper, and that the motion of the Defendant to amend the name of the Defendant, Leight to Leigh is proper, and wherefore it is

ADJUDGED, ORDERED and that the fictitious name of the Plaintiff, Thomas L. Poe, be and hereby is changed from Virginia Land Company to Virginia Land Company of Northern Virginia and that the name of the Defendant

page 36 } be and hereby is changed from Leight to Leigh; and it is further,

ADJUDGED, ORDERED and that a judgment be and hereby is returned in favor of the Plaintiff, Thomas L. Poe, against the Defendants, E. Kemper Beard, Trustee, Robert Allen, Eugene Forman, William A. Nagel, E. Kemper Beard,

William Champion, R.M. Leigh and Harold Umstadter, T/A Merrifield Joint Venture, in the sum of Twenty-Two Thousand Five Hundred Dollars ($22,500.00) together with interest from the 25th day of July, 1967, to run until the said judgment is paid and satisfied. To all of which the Defendants by Counsel excepted.

ENTERED this 26th day of December, 1968.

James Keith, Judge

H. Kendrick Sanders
Attorney for Plaintiff

Gibson, Hix & Hansbarger
By: Royce A. Spence
Attorney for Plaintiff

Seen and Excepted to:
McCandlish, Lillard & Marsh
By: R. J. Lillard

page 37 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

* * * * *

PLEASE TAKE NOTICE that E. Kemper Beard, Trustee, *et al.,* Defendants, by counsel, hereby give notice of appeal from the final order entered herein on December 26, 1968, and set forth the following assignment of error:

1. The Court erred in ruling that the Plaintiff, Thomas L. Poe, is entitled to recover judgment against these Defendants, E. Kemper Beard, Trustee, Robert Allen, Eugene Forman, William A. Nagel, E. Kemper Beard, William Champion, R. M. Leigh and Harold Umstadter, T/A Merrifield Joint Venture, in the sum of Twenty-Two Thousand Five Hundred Dollars ($22,500.00) in that said ruling is contrary to the law and the evidence in the following particulars:

a) The Court erred in failing to find that the Open Listing

Agreement of January 5, 1967, was modified and
page 38 ⊢ *superceded* by the Commission Agreement of
March 30, 1967, to the extent that the Commission Agreement of March 30, 1967, exclusively governed the right of the Plaintiff to a commission in the event of a sale of the subject property to the United States Post Office Department, and, further, that under the evidence the terms of said Commission Agreement of March 30, 1967, were not met and Plaintiff is not entitled to a judgment in any amount.

b) The Court erred in failing to find that the waiver contained in Paragraph (4) of the said Commission Agreement of March 30, 1967, is binding on the Plaintiff and that by its terms the Plaintiff waived his claim to a commission based on each and every act of Plaintiff which in any way could have contributed to the sale of the subject property to the United States Post Office Department.

c) The Court erred in finding that the Plaintiff was the procuring cause of the sale of the subject property to the United States Post Office Department.

E. Kemper Beard, Trustee
E. Kemper Beard
Robert Allen
Eugene Forman
William A. Nagel
William Champion
R. M. Leigh
Harold Umstadter

By R. J. Lillard
Counsel for Defendants

* * * * *

Filed Feb. 4 1969

W. Franklin Gooding, Clerk of the Circuit Court of Fairfax County, Va.

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page 12 }

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THOMAS L. POE being first duly sworn was examined and testified upon his oath as follows:

DIRECT EXAMINATION

By Mr. Spence:

page 13 } Q. Will you please state your name and present occupation to The Court, please?

A. My name is Thomas L. Poe. I am a real estate broker in the State of Virginia and reside in Fairfax County.

Q. Where is your business office located, Mr. Poe?

A. 8027 Leesburg Pike, McLean, Virginia.

Q. Are you a licensed real estate broker at this time?

A. Yes.

Q. As of, say, from the period of December, 1956 until August of 1967, were you also a licensed real estate broker?

A. Yes.

Mr. Spence: If Your Honor please, I think it has been put into issue. I present to The Court this certification of license certified by the Virginia Real Estate Commission.

The Court: Any objection?

Mr. Lillard: I have no objection.

The Court: Complainant's Exhibit No. 1.

(The Document referred to was marked Plaintiff's Exhibit No. 1 and received.)

By Mr. Spence:

page 14 } Q. Mr. Poe, directing your attention to the parcel of land located at the corner of *Prsperity* Avenue and 29-211, will you tell The Court, please, when you first became aware of that property?

A. An associate of mine in Charlottesville, Virginia, had met a Mr. Umstadter who at that time had been in Charlottesville and directed me later to Mr. Umstadter, saying that Mr. Umstadter had a piece of property in Fairfax County near Merrifield that he would like to sell.

I called Mr. Umstadter several weeks later, made an ap-

pointment with him to discuss the property and at that time of the discussion Mr. Umstadter gave me—

Q. Is this the same Mr. Umstadter that is defendant in the matter, then?

A. Yes.

Q. He is an owner of the property, then?

A. Yes.

Mr. Umstadter gave me a copy of a plat or a photo copy of the plat that he had in his office and I took a copy with me.

Q. Is this a copy of that plat that he gave you at that time or is that the plat that he gave you?

A. This is the plat he gave me.

Mr. Lillard: We have no objection.

page 15 } The Court: Plaintiff's No. 2.

(The document referred to was marked Plaintiff's Exhibit No. 2 and received.)

By Mr. Spence:

Q. Subsequent to the receipt of that plat from Mr. Umstadter what, if anything, did you discuss with him?

A. Mr. Umstadter explained to me that he was one of the owners but he didn't have all the facts and details on the property and was not sure of the updated price and so forth on the property.

He directed me to Mr. Beard, Mr. Kemper E. Beard, in Vienna, Virginia, and said that he was the trustee for the owners and that he would bring me up to date and give me a listing on the property.

Q. All right.

What next did you do then with regard to this property?

A. I called Mr. Beard, or I believe Mr. Umstadter called Mr. Beard and told him that I would be there or be in touch with him. I called Mr. Beard and made an appointment with him.

Q. Approximately what time of year was this,

page 16 } if you recall?

A. First of the year, first part of January.

Q. Of what year?

A. 1967.

Q. Did there come a time then when you dropped by to see Mr. Beard in regard to your appointment?

A. Yes.
Q. Tell us what occurred at that time.
A. I took an exclusive listing agreement to Mr. Beard for him to sign regarding the four and a half acres in Merrifield.
Mr. Beard told me at that time he would not give me an exclusive listing, but he would give me an open listing on the property since several other brokers had been working on it, also.
Q. Did he indicate to you how long this property had been on the market at that time, approximately?
A. He said it had been on the market several years.
Q. Now, I show you this document entitled Open Listing Agreement and ask you if you can identify that?
A. Yes.
Q. What is that?
A. This is the open listing agreement between
page 17 } Kemper Beard and myself.
Q. Who signed that, if you can tell The Court?
A. Mr. Beard and myself.
Q. That was signed in your presence, then?
A. Yes, it was.
Q. Is this a standard form?
A. Yes, it is.

Mr. Lillard: I have no objection.
The Court: Plaintiff's No. 3.

(The document referred to was marked Plaintiff's Exhibit No. 3 and received.)

By Mr. Spence:
Q. What commission, if any, does that call for in there?
A. That calls for—

The Court: It speaks for itself, Mr. Spence; you don't have to go into that.

By Mr. Spence:
Q. Is the commission called for in that document a reasonable one, in your opinion?
A. Yes.
Q. Ordinary one in the trade?
page 18 } A. Yes.

Thomas L. Poe

Q. What occurred, what other discussion did you have, if any, with Mr. Beard at that time?

A. I asked him if he would be interested in selling a portion of the property instead of possibly the whole property if a buyer became available for such. He indicated that it depends on price and the terms and so forth whether he would sell a portion of the property.

Q. Regarding terms, what discussion, if any, did you have with him regarding terms?

A. He said that he wanted a $1.25 a square foot for the property because they had quite a bit of money in the property; they had held it several years and they were interested in selling it.

He said, "Please bring any reasonable offer to me. However, I am not sure that I will accept it."

Q. What occurred, then, thereafter, after your discussion with Mr. Beard?

A. After I left Mr. Beard's office, I went to the sign company in Falls Church, Virginia, Tom Woods Sign Company, and had him erect two 4 by 8 For Sale signs on the property with slats indicating the size of the property, four and a half acres, and that it was industrial.

page 19 } Q. I show you this bill and these various pictures and ask you if you can identify those pictures?

Can you identify those?

A. Yes.

Q. Tell The Court what they are, if you will.

A. These are pictures of the For Sale signs that I put up on the property or had erected on the property by Tom Woods Sign Company. The invoice is a standard form sent to me by them indicating that they had done this.

Q. The pictures you have there accurately depict the scene?

A. Depict the sign?

Q. Yes.

A. Yes.

Q. You took the colored pictures yourself, is that correct?

A. Yes.

Q. Tell us, if you will, when those were taken, by the way.

A. Those pictures were taken after I met with you and Mr. Sanders regarding the sale of the property in regards to the commission not being paid by the seller.

Q. All right. That was the place that you did put the sign?

A. Yes.

page 20 } Mr. Lillard: We have no objection.
Mr. Spence: If Your Honor please—
The Court: How many are there?
Mr. Spence: Four pictures and a bill. The bill will be 4-A and the pictures will be 4-B, C, D and E.

(The documents referred to were marked Plaintiff's Exhibits No.s 4-A, B, C, D and E, respectively, and received.)

By Mr. Spence:
Q. Now, did there come a time after you placed up the sign that you had any further contact with Mr. Beard?
A. He called me on occasions to ask me how I was doing with the sale of the property, had I had any interesting clients that might present an offer to him.
At that time I told him that I did not have any ready, willing and able buyer.
Q. Now, during this period of time, were you showing the property to other persons?
A. Yes.
Q. How many, approximately, say from January to March of 1967 did you show that property to?
page 21 } A. Six interested clients.
Q. Can you tell us any of their names? Do you recall any of their names?
A. Yes. One was Mr. Tart of the Tart Lumber Company, Alexandria.
Q. Any particular reason why you remember that name or do you remember any other names?
A. No, I do not.
Q. Now, what else during that same period of time from January to March, if anything, did you do with regard to this property?
A. I advertised the property in the newspaper.
Q. What paper was that?
A. The Washington Post.
Q. Is this a copy of that ad, the middle one here?
A. Yes, it is.
Q. When did that run, if you can tell us?
A. March 31 and April 1st and 2nd, 1967.

Thomas L. Poe

Mr. Lillard: What are you offering?

Mr. Spence: This one.

Mr. Lillard: Can you give it by itself? It seems to me the balance of the page is immaterial.

Mr. Spence: I agree with you. All I am offering page 22 } is the middle one.

I would offer this at this time, the middle ad that he has testified was relating to this property. The others have no relation to this property whatsoever.

The Court: You want to put the whole book in?

Mr. Spence: Do you care if I tear the page out?

The Witness: No, I don't care.

Mr. Spence: We can cut the others away if The Court please.

The Court: Any objection, Mr. Lillard?

Mr. Lillard: What is the date of that?

The Court: March 31, April 1 and 2, no year. Industrial.

Mr. Lillard: May I see it again?

I thought we were discussing whether we would remove it from the page.

Mr. Spence: Be happy to, not the page but I would cut this area out.

Mr. Lillard: I have no objection to that going in with the dates.

The Court: Plaintiff's Exhibit No. 5. I will give you your book back, Mr. Poe.

page 23 } (The document referred to was marked Plaintiff's Exhibit No. 5 and received.)

By Mr. Spence:

Q. Directing your attention to the 29th of March, 1967, did anything in particular occur with regard to this piece of property at that time?

A. Yes. A gentleman by the name of Mr. Matthews called my office on several occasions. One, I believe, March 29, 1967 and March 30, 1967, and left word with my answering service that he wanted me to return the call to him.

Q. Do you have an accurate recollection as to when he actually called your office?

A. Yes. I have the slips from the answering service that they take when they receive calls from clients and at the end of the month they send these to me.

Q. That serves to refresh your recollection, then?

Mr. Lillard: I don't think he can use this properly. This obviously was a record made by someone else.

The Court: Objection sustained.

Mr. Spence: We would offer at this time, ask the witness to identify these, offer them for identification. We do have a witness coming to identify these.

page 24 } The Court: All right.

By Mr. Spence:

Q. I ask you to identify those pictures.

A. Yes.

Q. Tell The Court what they are, if you will.

Mr. Lillard: Well now, I object to this.

The Court: He can identify them, Mr. Lillard, not the contents; just say they are slips he got from the call service.

Is that what they are?

The Witness: Yes, sir; indicating that Mr. Matthews called me.

The Court: I don't want to know that. I just want to know what the slips are.

The Witness: Yes.

Mr. Spence: I move these for identification at this time as Complainant's 6 and 7.

(The documents referred to were marked Plaintiff's Exhibits Nos. 6 and 7, respectively, for identification.)

By Mr. Spence:

page 25 } Q. Relate to The Court this conversation you had at this particular time.

A. On the 30th I called Mr. Matthews back and Mr. Matthews indicated that he had clients who were interested in the property.

Q. Did he identify himself at that time when you talked to him?

A. Yes, he did. He said he was Mr. Matthews. He would not tell me who he was with.

Q. What else, what other discussion did you have with him at that time?

A. He indicated that they wanted to buy the property; they

Thomas L. Poe

had seen my sign on the property and they would send a representative to my office on the following day.

Q. Did there come a time when this person called you then and made an appointment?

A. Yes.

Q. I ask if you can identify this slip of paper?

A. Yes.

Q. What is that?

A. This is the answering service slip for the other officer of the Post Office Department.

Mr. Lillard: Isn't this the same as before?

page 26 } Mr. Spence: I move it for identification.

The Court: No. 8 for identification.

Mr. Lillard: Excuse me just a minute, Your Honor. I don't want to make an issue of the telephone slips. I think the objection was well founded, but Mr. Poe has testified and can testify that he talked to Mr. Matthews. He has testified and I assume will testify that he talked to Mr. Flora. It seems to me that they are the significant facts.

The Court: That is what I would say, that this is really not—

Mr. Spence: This is merely corroboration of his testimony.

The Court: All right.

(The document *reffed* to was marked Plaintiff's Exhibit No. 8 for identification.)

By Mr. Spence:

Q. Did there come a time then when this second person did come to see you?

A. Yes.

Q. What was his name and position?

A. His name was Mr. Flora. He called me, of course, the morning of the 30th and came to my office later

page 27 } in the afternoon; said that he would meet with me.

At this time I still did not know who was purchasing the property.

Q. Now, he did come to your office, then?

A. Yes.

Q. What occurred thereafter?

A. He brought with him an option agreement and pulled out a badge stating that he was a representative of the Post

Office, special agent in purchasing property for the Post Office Department.

Mr. Lillard: If The Court please, Mr. Spence and Mr. Sanders took the deposition of Mr. Flora and Mr. Matthews. Those depositions are in the file. I think that the testimony as to what they said and what they did should be restricted to their own testimony, not what Mr. Poe said they said or they did. We have the very best, their own testimony.

The Court: I don't think he can testify what they said; he can say what they did.

Mr. Spence: Very well, Your Honor.

By Mr. Spence:

Q. What occurred then after Mr. Flora came to your office then?

A. He said the Post—

page 28 } The Court: I don't want to know what he said. I want to know what he did.

By Mr. Spence:

Q. Did you discuss at that time the property?

A. Yes.

Q. Did he evidence an interest in behalf of the Post Office for that property?

A. Yes.

Q. Now, did he indicate, did you indicate to him, the terms the owners wanted for that property?

A. Yes.

Q. Now, what, if anything, did he do as a result of your discussion?

A. Typed an option agreement on the terms from my listing agreement with the seller.

Q. Now, approximately how long was he in your office at that time?

A. Forty-five minutes to an hour.

Q. Did you arrange, what arrangements, if any, did you make with him with regard to this?

A. He told me to meet him back in the Stratford Motor Inn in Falls Church after I had obtained the option from the seller.

Thomas L. Poe

page 29 } Q. Now, at that point in time he did leave your office, is that correct?

A. Yes.

Q. Now, what did you do after he left the office?

A. I called the sellers and told them that I had an option agreement for their property. I did not state who the buyers were and told them I would like to meet with them as soon as possible to present this option from my client.

I said I thought that they would be very interested in it seeing as it was the terms they had asked for in their listing agreement.

Q. Then what steps did you take after that?

A. I went to my library and picked up my real estate form book which I use for to draw these agreements up.

Q. Is that the agreement book you took that from?

A. Yes.

Q. Now, can you show to The Court what form particularly that you used, if any, in that book?

Mr. Lillard: I don't see the materiality of this, Your Honor.

The Court: How is this material? Did he get a form signed?

Mr. Spence: Yes, sir; he did.

page 30 } The Court: Why isn't that—that is what he ought to testify from, not what book he looked at.

Mr. Spence: I think there is some disagreement with regard to what the exact terms of the form are, what the meaning of those words are. This is introduction, or at least introduction into evidence of this term, not the state of mind of this person, not the various terms, but to show the intent.

Mr. Lillard: I feel that the form was prepared by Mr. Poe; it was taken by him to Mr. Beard for signature.

Mr. Spence: No dispute at all.

Mr. Lillard: It speaks for itself.

Mr. Spence: If Your Honor please, I think again it is ambiguous and needs interpretation.

The Court: Let me see the agreement.

Mr. Spence: This is the agreement.

The Court: What is the ambiguity?

Mr. Spence: Our position, if Your Honor, with regard to that instrument is that particularly regarding paragraph 4, I think that the instrument itself, it is our position at least,

that the instrument says if this deal completely falls through and the property is not sold to the Post Office Department, whether as a result of this option that he brought
page 31 } with him at that time or a contract of sale or anything else, any other documents or instruments, if title to that property does not pass, Mr. Poe waives his commission and the original agreement between the parties, the listing agreement which is in evidence, he indicated that it was agreed there between these parties if a commission, if a ready, willing and able buyer was produced, he was due a commission.

Mr. Lillard: I object to argument of the case at this point.

The Court: I have to hear him, Mr. Lillard, to know what ambiguity he seeks to clear up.

Mr. Lillard: I think he should answer your question, Your Honor, and not argue the case.

The Court: I will get him to. I am trying to find out where is the ambiguity.

Mr. Spence: Paragraph four.

The Court: I am reading paragraph four.

Mr. Spence: Now, I say there is a difference of interpretation of paragraph four.

The Court: I am not going to hear evidence on that. Objection sustained.

Mr. Spence: I would proffer this testimony,
page 32 } note our exception, if Your Honor please, respectfully, and move the introduction at least of this book into identification.

The Court: That would be No. 9 for identification. The Court excluded it.

(The document referred to was marked Plaintiff's Exhibit No. 9 for identification.)

By Mr. Spence:

Q. Now, say that you did take, you did at least draw up an instrument at that time in your office?

A. Yes.

Q. What, if anything, did you do with the instrument and the option that you had been left?

A. After I had finished drawing up the commission agreement I went to Mr. Beard's office.

Q. Who did you meet there with?

Thomas L. Poe

A. Mr. Beard and Mr. Nagel. They read the agreement.
Q. Which agreement are you now speaking of?
A. The commission agreement.
Q. Is that instrument that I show you now entitled Commission Agreement?
A. Yes.
page 33 } Q. Who is that signed by on the back there?
A. Kemper Beard and—Mr. Kemper Beard and Thomas L. Poe.
Q. This is the agreement you took with you that day it was executed by them?
A. Yes.

Mr. Lillard: I don't object to that.
Mr. Spence: I move this as Plaintiff's Exhibit No. 10.
The Court: Plaintiff's No. 10 is called Commission Agreement.

(The document referred to was marked Plaintiff's Exhibit No. 10 and received in evidence.)

By Mr. Spence:
Q. What, if any, *discuss* ensued with regard to that commission agreement?
A. I had Mr. Beard sign the commission agreement. I also signed it before I showed them the option agreement from the Post Office Department. The purpose of this was first to acknowledge, the sellers to acknowledge that I was the procuring cause for the Post Office for bringing my client to them.
Second of all, that should the property be sold
page 34 } to the Post Office—

Mr. Lillard: I object to this, Your Honor. I think the agreement speaks for itself. It has to stand on its own feet. It means what that language means, not what Mr. Poe now says he had in mind.
Mr. Spence: If Your Honor please, he is testifying to his intent that he had at the time of the discussion he had with these parties regarding that.
The Court: Well, I don't see any objection, Mr. Lillard, to his saying why he got it signed. I don't think that changes the meaning of the agreement. It means what it says and it says what it means.

He just wants to say why he got it signed and not what it means. I overrule your objection.

Mr. Lillard: I have no objection to his saying why he got it signed as long as that answer does not include a statement of what he had in mind in the agreement itself.

Mr. Spence: Continue with your answer.

The Court: Do you understand The Court's ruling?

The Witness: Yes, sir.

The Court: All right.

page 35 } The Witness: This process of signing the commission agreement I used to acknowledge, for my seller to acknowledge the fact that I did bring the client to them and the fact that should the property be sold to my client and should the deed and the title transfer, then I will be due a commission.

Mr. Lillard: I feel that answer is objectionable because it does tend to show what the agreement was and not why he got it signed.

The Court: I will admit it on the intent to show why he got the agreement signed, not what it said.

By Mr. Spence:

Q. What discussion, if any, did you have with these parties?

A. Mr. Beard at that time indicated that at an earlier date the Post Office had contacted a Mr. Hooper who owned the adjoining property. They had been interested in this property.

Q. Who had been interested in the property?

A. That the Post Office Department had previously been interested in the property.

Q. Did he indicate how long previously that was?

A. Several years.

Q. Prior to this matter?

A. Yes.

Q. All right. Go ahead with your discussion.

page 36 } A. Yes. And they signed the agreement; Mr. Beard signed the commission agreement and then I turned over the option agreement from the Post Office Department.

Q. Was there any discussion between Mr. Nagel and Mr. Beard with regard to this agreement?

A. Mr. Beard had Mr. Nagel read the commission agree-

ment to decide whether or not he should sign it and they were in accord and Mr. Beard signed the commission agreement.

Q. They were in accord?

A. Yes.

Q. Did any discussion pass between them?

A. None that I can remember.

Q. So then you passed them the option agreement?

A. Yes.

Q. I ask if you can identify this form entitled Option to Purchase Land?

A. Yes.

Q. Identify that to The Court, if you will, please?

A. This is the option agreement given to me by Mr. Flora of the United States Post Office Department in regard to the purchase of the four and a half acres in Merrifield owned by Mr. Beard and associate.

Mr. Lillard: No objection to this.

page 37 } The Court: No. 11 for the Plaintiff.

(The document referred to was marked Plaintiff's Exhibit No. 11 and received.)

By Mr. Spence:

Q. Was this executed then in your presence by Mr. Beard?

A. Yes.

Q. Did you pass anything else to him with regard to that?

A. Yes. Mr. Flora had given me a dollar bill as consideration to transfer to Mr. Beard, which I did.

Q. Did you discuss this option then with the parties?

A. Yes.

Q. Tell us what passed then, in that discussion?

A. Mr. Beard and Mr. Nagel read the option agreement and discussed the fact that it was for 30 days and wanted to know how long it would take the Post Office to act on the sale of this property and actually exercise the option of going to contract. It was discussed at that time that usually an option agreement, they sometimes renew options, their going for 30 days, if need more time, they will extend an option or go back for a renewal of the option. I discussed with them

page 38 } that 30 days seemed like a short time to me but it might be two weeks or it might be two months before they would actually exercise.

Thomas L. Poe

Q. At that time, did you have any personal knowledge with regard to the Hooper transaction?
A. Yes.
Q. Did you have any personal knowledge with regard to how long that negotiation took?
A. Six to nine months.
Q. This was knowledge you had at that time, then?
A. Yes.
Q. They were dealing with whom?
A. The Post Office Department.
Q. Did you discuss this with Mr. Beard, mention this to them, if you recall?
A. Yes.
Q. The Hooper negotiations were mentioned to them?
A. Yes, they mentioned it, also.
Q. Were they aware of them?
A. They were aware of them.
Q. The length of time it took?
A. Yes.

Q. Now, with regard to this option and what page 39 } occurred after that, then, if anything?

A. After the option I returned, after they signed the option agreement I returned to Mr. Flora's room at the Stratford Motor Inn in Falls Church.
Q. Did you deliver the option to him at that time?
A. Yes, I did.
Q. Did you have any discussion with him at that time with regard to the option?
A. Yes. Mr. Flora indicated—

Mr. Lillard: I object to this.
The Court: Objection sustained. You can't tell what he said.

By Mr. Spence:
Q. He took the option at that time?
A. Yes.
Q. What occurred thereafter with regard to this property?
A. Mr. Beard and Mr. Nagel called me on several occasions to find out how things were going on the property and wanted me to follow up with the Post Office Department.
Q. Directing your attention, say, to the period April 1st

Thomas L. Poe

—April 15, can you tell The Court what actions you took at that time with regard to this property?

page 40 } A. Yes. I was in touch with Mr. Matthews of the Post Office Department and asked him what his feelings were as regards to the time element for settlement or for exercising of the option. He indicated to me—

The Court: No.
The Witness: It was indicated to me—
The Court: No.

By Mr. Spence:
Q. You did call him, then?
A. Yes.
Q. How many times during this period, April 1st to April 15, did you talk with him?
A. Half a dozen times.
Q. Now, was there ever any indication to you that they were not going to purchase the property?
A. No.
Q. Now, directing your attention to probably the middle, what occurred at that time, if anything?
A. Repeat the question.
Q. Directing your attention to 15th of April or approximately the middle of April, what occurred at that time?
A. I was due to go in the Marine Corps Reserve in Boston for 30 months active duty.

page 41 } Q. Thirty months?
A. Thirty days, excuse me. I chose this instead of weekends, normally done by the reserves.
Q. Your answer is that you left. Did you go up there eventually?
A. Yes. Before I left I contacted Mr. Matthews and told him that I would be gone and that he could carry on negotiations with Mr. Beard and his associates on the property.
I also called Mr. Beard and Mr. Nagel and indicated to them that I would be out-of-town, that I would be in touch with them, but that the Post Office Department would also be in touch with them.
Q. Then you talked with both parties and indicated to them that you would be out-of-town?
A. Yes.
Q. Now, you were up there for 30 days, is that correct?

A. Yes.
Q. Now, is it true that at that time the—

The Court: Don't lead the witness now, Mr. Spence.
Mr. Spence: Beg your pardon.

By Mr. Spence:
Q. Did there come a time, at or about the end of April when you talked again with Mr. Matthews?
page 42 } A. Yes. On the 27th of April I called Mr. Matthews in Washington and asked him the status of the option and he indicated to me—

The Court: No.
Mr. Sanders: Your Honor—
The Court: You can't say anything; I'm sorry.
Mr. Spence: I will ask him, Your Honor.
If Your Honor please, I would indicate there, there is an issue raised in the pleadings that the Post Office Department at some time or other did not actually want this property. I would submit to Your Honor that it is most relevant with regard to this particular issue that Mr. Matthews' statements, and those are statements of the Post Office employees, be brought in.
The Court: Are they going to come to testify?
Mr. Spence: We have depositions, if Your Honor please.
The Court: All right. Offer the depositions.
Mr. Spence: Very well.

By Mr. Spence:
Q. As a result of your telephone call at or about the end of April, was there any change in the situation then, to your knowledge?
page 43 } A. I called Mr. Nagel on the first of April.
Q. First of April?
A. First of May, excuse me.
Q. But the question was: As a result of your call to Mr. Matthews at or about the end of April, prior to the time it expired, was there any change in the situation?
A. No, there was not.
Q. What was the situation at that time?
A. That they were going on and buying the property per the option agreement.

Thomas L. Poe

Mr. Lillard: I think that this is the sort of testimony that Your Honor has ruled out.

Mr. Spence: Not testified what the man said, Your Honor.

The Court: I know. He said the same thing, though, Mr. Spence. He has given a conclusion that the only way he could get is from talking to the other people. The only thing he can testify to is that it was never withdrawn and never acted on. That's all he can say.

By Mr. Spence:

Q. As a result, at that time was it ever withdrawn?

A. No, sir.

Q. Now, you mentioned earlier a call on or about
page 44 } May 1st of '67 to Mr. Nagel?

A. Yes.

Q. Relate to The Court what occurred there, if you will? Why did you call him at that particular time?

A. Mr. Nagel had called my office in McLean, Virginia, and had left a message that he would like me to call him. When I was out-of-town, I did contact my office on a daily basis to keep in touch with my pending contracts and so forth and the message was given to me that Mr. Nagel had called.

I called Mr. Nagel long distance and discussed with him the option and he wanted to know whether or not the Post Office was going to act and he indicated to me that the expiration date was April 1st and would like me to be in touch or call the Post Office Department to find out the status of the option.

Q. Did you relate to him your conversation then with Mr. Matthews?

A. Yes.

Q. Now, what action, if any, did he ask you to take at that time?

A. He asked me to call Mr. Matthews and bring him up to—

Q. Did you call Mr. Matthews then again as a
page 45 } result of that call?

A. Yes.

Q. The next day or that day?

A. That day.

Q. Was there any discussion with Mr. Matthews with regard to an extension?

Mr. Lillard: I object, Your Honor.

The Court: He can say what he said, Mr. Lillard; he can't say what Mr. Matthews said.

Did you discuss extension with Mr. Matthews?

The Witness: Yes.

By Mr. Spence:

Q. Did you discuss or indicate to him in any way about the fiscal year?

A. Yes.

Q. You can't say what he said.

You did discuss that with Mr. Matthews?

A. Yes.

Q. Who was in the government?

A. Yes.

Q. Now, what occurred thereafter then? To your knowledge, was the option taken up at that time?

A. No, it was not.

page 46 } Q. Now, what occurred then, thereafter?

A. I returned home on about the middle of May.

Q. What then?

A. On Monday morning, I believe it was—I mean May 15—I contacted Mr. Beard to see if he had heard from the Post Office Department regarding the sale. I called several times and I did not have the answer from them.

Later that afternoon I went over to their office and met Mr. Nagel and Mr. Nagel indicated to me that they had received a contract from the Post Office Department and they had also received a deposit from the Post Office Department.

Mr. Lillard: I am sorry—didn't you testify to a date for this? When did this happen?

The Witness: The middle—

Mr. Spence: The 15th of May or middle of May is what he testified.

By Mr. Spence:

Q. You say he indicated to you they had been presented a contract and a check?

A. Yes.

Q. What action at that time had they taken with regard to this presentation?

page 47 } A. None.

Thomas L. Poe

Q. What request, if any, or what discussions, if any, did you have with him with regard to this at that time—if any?

A. I wanted a copy of the agreement for my records and also wanted to know if I had been included in the contract that was being negotiated between them and the Post Office Department. They indicated to me that—

Q. They or—

A. Mr. Beard.

Q. Was Mr. Beard present at the meeting, also?

A. They both have their office in the same room. I believe it was just Mr. Nagel.

Q. So he indicated—

A. Yes, Mr. Nagel indicated.

Q. Go ahead.

A. That I had not been included in the contract and that there was discussion whether I had done my job and whether or not I should receive a commission and that they were going to have a meeting in several days or within a week to determine whether I had a commission due to me.

Q. What did you relate to him at that time with regard to your job, if anything?

page 48 } A. Repeat the question.

Q. What, if anything, did you relate to him with regard to whether or not you had performed your function?

A. I told him that I had performed my job, that I had procured the buyer and that I had a commission due.

Q. Now, was there any discussion with him with regard to price?

A. Yes.

Q. What did he indicate to you about the price?

A. He said the price was somewhat less than what we had earlier discussed or what the original option had indicated.

Q. Did you ask him for a more specific answer than that?

A. Yes.

Q. What answer did he give then?

A. He wouldn't tell me. He just said that it was not the original option price.

Q. Did he indicate to you anything at that time with regard to negotiations with the government?

A. Yes, he said that they had met with the Post Office Department and had discussed the terms and so forth but they had not come to any agreement.

page 49 } Q. Did he indicate to you anything about the government changing their mind at that time?

A. No, he did not.

Q. Never mentioned that at all?

A. No.

Q. Never came into the discussions at all?

A. No.

Q. What action did you take thereafter?

A. I called the Post Office Department.

Q. To whom did you talk at that time?

A. Mr. Matthews.

Q. Did you discuss with him, or what did you discuss with him, if anything?

A. The fact that the sellers were not willing to give me a copy of their contract or at least the offer the Post Office had made to them and that they had by-passed me in regards to them.

Q. As a result of this call, did you obtain the name of anyone else?

A. Yes.

Q. Did you call that person?

A. Yes.

Q. Who was that person?

page 50 } A. Mr. Finegan.

Q. In your discussion with Mr. Finegan, why did you call Mr. Finegan? Why did you call him?

A. I had been told that Mr. Finegan on occasions by-passed—

Mr. Lillard: I object to this.

The Court: Sustained.

By Mr. Spence:

Q. What did you say as a result, why did you call Mr. Finegan?

The Court: He can't say. He was going to say somebody told him something and I say that is hearsay.

By Mr. Spence:

Q. Did you call Mr. Finegan?

A. Yes.

Thomas L. Poe

Q. Now, did you indicate to him your relationship to this *pruchase*?

A. Yes.

Q. What, if anything else, ensued as a result of that conversation?

A. He hung up.

Q. He hung up?

A. Yes.

page 51 } Q. Was it a pleasant conversation?

A. No, it was not.

Q. Did he acknowledge—

The Court: Now you are leading the witness.

By Mr. Spence:

Q. What acknowledgment, if any, was made of your agency at that time?

A. None.

Q. Did you tell him—what did you tell him with regard to your agency?

A. I told him that I was the broker in the transaction; that Mr. Flora and Mr. Matthews had come to me as the broker and that they had dealt through me and that they should continue dealing through me.

Q. You indicated he hung up then?

A. Yes.

Q. What did you do after your call to this Mr. Finegan?

What, if anything occurred after your discussion with Mr. Finegan?

A. I called the sellers and told them that if they did not recognize me as the broker in regards to the transaction, that I would seek legal advice.

page 52 } Q. Up until that time, had you had any information with regard to a change of mind of the government?

A. No.

Q. At this time, after you had talked with Mr. Finegan you say you called some person. Who was that that you had this discussion with?

A. Repeat the question.

Q. Yes, sir. You say after your call to Mr. Finegan, you called some person and related to him that you intended to obtain an attorney. Who was that person?

A. Yes. Mr. Beard.

Q. Relate that conversation again, if you will.

A. Yes, Mr. Beard was in his office and I understand Mr. Nagel was present, also. I was talking by telephone.

Mr. Beard said he felt that I had a commission due me but the others in the group felt that I didn't have a commission due.

Q. Mr. Beard felt there was a commission due?

A. Yes.

Q. Go ahead. Continue.

A. I believe he talked to Mr. Nagel at that time in the same office and Mr. Nagel said he didn't think I had a commission due.

page 53 } Q. Was there any other conversation then with these parties?

A. Yes, their group was going to get together and go over the government offer and also discuss my commission.

Q. Now, did there come a time later when you called again with regard to this commission?

A. Yes. They were supposed to call me back after they had met, after the group—I believe there are eight individuals—to determine whether or not my commission was due. I never heard from them again and therefore I did call him again.

Q. Called Mr. Beard?

A. Yes.

Q. Now, what was that discussion again?

A. Mr. Beard said they were not going to pay me a commission; that the group had decided they had talked to their attorney and they decided that I did not have a commission due me.

Q. Did they indicate to you anything at that time about the government having changed its mind or had there been a break in the negotiations?

A. No.

Q. Nothing about that?

page 54 } A. No.

Q. Did they mention your commission agreement at that time?

A. No.

Q. They just indicated to you at that time that you were not going to get a commission?

A. Right.

Q. They had decided this?

Thomas L. Poe

A. Yes.
Q. Did they give you any ground at all for it?
A. No.
Q. What occurred after that then?
A. I called on you and Mr. Sanders.
Q. As a result of that, of your discussions with us, did you request us to send a letter on your behalf to the Post Office Department and Mr. Beard?
A. Yes.
Q. I show you this letter dated July 19, 1967 and ask you to identify that.
A. Yes.
Q. Identify that to The Court, if you will?
A. Yes, that is the letter that you wrote to them.

Mr. Spence: I want to offer this—exclude this
page 55 } telephone number.
Do you have the original of those letters?
The Witness: Yes.
Mr. Spence: Do you have the—
The Witness: No, I don't. I believe you sent me a copy.
Mr. Lillard: Are you offering this just to show that the letter was sent or are you offering it to prove its contents?
Mr. Spence: I am offering it to show that the letter was sent with those contents; that a demand letter was sent to Beard, to Mr. Beard, to the sellers and the buyers of this property on or about that date and that that is the letter.
Mr. Lillard: I don't see how he can testify to that.
The Court: He can't.
Do you have objection to this?
Mr. Lillard: The letter was sent to and received by Mr. Beard. This I will stipulate to. Whether it was sent or received by the Post Office Department, I don't know.
I assume it was, but I don't know.
The Court: Do you have any objection to its
page 56 } coming in with that stipulation, that it was a copy of this letter that was received by Mr. Beard?
Mr. Spence: No, sir; Your Honor—
The Court: I am asking Mr. Lillard.
Mr. Lillard: I have no objection to its being admitted to show that that letter was sent to and received by Mr. Beard.
The Court: Plaintiff's No. 12.

Thomas L. Poe

(The document referred to was marked Plaintiff's *Exhivit* No. 12 and received.)

By Mr. Spence:

Q. Did there come a time when you received a reply from Mr. Beard?

A. No.

Q. Did there ever come a time when you were paid a commission as a result of this?

A. No.

Q. Have you been ready, willing and able since March 1st, 1968 to carry out your duties as a broker in this regard?

A. Yes.

page 57 } Mr. Spence: If Your Honor please, I would move at this time—I don't know the agreement of sale dated June 14, 1967 and the deed dated July 25, 1967 of this property—I am not sure about this—

The Court: I don't know whether it is agreed to. Is the deed a certified copy?

Mr. Lillard: I have no objection to the deed being admitted into evidence. I think Your Honor would take judicial notice of it as a record of this court.

The Court: Number 13 is the deed—Beard, trustee.

To whom?

Mr. Spence: To the United States Government, if Your Honor please, United States of America.

The Court: Plaintiff's No. 13 is the deed.

(The document referred to was marked Plaintiff's Exhibit No. 13 and received.)

Mr. Lillard: I am willing to stipulate that this is the contract. I was requested to do so and I agreed to do so before the trial.

The Court: Plaintiff's 14. Contract of Sale between Mr. Beard, trustee, and the United States of America, dated June 14, 1967.

page 58 } (The document referred to was marked Plaintiff' Exhibit No. 14 and received.)

Thomas L. Poe

By Mr. Spence:

Q. Mr. Poe, you are also doing business as Northern Virginia—Land Company of Northern Virginia?

A. Yes.

Q. You have filed a fictitious name?

A. Yes.

Q. Is this that fictitious name filing?

A. Yes.

Mr. Spence: If Your Honor please, we would move at this time that our pleadings be amended to show that Mr. Poe is trading as Virginia Land Company of Northern Virginia. I think it is now Virginia Land Company—I move the introduction of this fictitious name.

Mr. Lillard: I have no objection and I have no objection to the admission into evidence of the certificate.

The Court: Plaintiff's No. 15.

(The document referred to was marked Plaintiff's Exhibit No. 15 and received.)

page 59 } By Mr. Spence:

Q. Mr. Poe, did you testify earlier with regard to the length of time you have been in the real estate business?

A. No.

Q. All right, will you indicate to us then how long you have been involved in the real estate business?

A. Yes. I have been in the real estate business approximately five years.

Q. Approximately five years. That would be, then, four years prior to the time these incidents occurred?

A. I would say a total of six, probably, yes.

Q. In what capacity had you served in that?

A. First as salesman, then as real estate broker.

Mr. Spence: I have no further questions at this time, Your Honor.

The Court: Let's take a ten minute recess.

(Short recess)

The Court: Do you agree these can be admitted, Mr. Lillard, these—

Mr. Lillard: Yes, I do.

Mr. Spence: I move those then, Your Honor.

The Court: Plaintiff's Exhibits Nos. 6, 7, 8, are admitted without objection.

page 60 } (The documents referred to which were marked Plaintiff's Exhibits Nos. 6, 7 and 8 were received.)

The Court: All right, Mr. Lillard.

CROSS EXAMINATION

By Mr. Lillard:

Q. Mr. Poe, I believe you testified that in January of 1967 you went to see Mr. Beard and procured his signature on this open listing agreement?

A. Yes.

Q. This is in evidence as Plaintiff's Exhibit No. 3.

Now, at that time did you know of the fact that the United States Post Office Department had bought the Hooper tract?

A. Yes.

Q. Did you know when they bought, the government bought, the Hooper tract?

A. Yes.

Q. When did it take place?

A. During the fall of '66.

Q. Did I understand you correctly to testify that this negotiation had occurred two or three years before

page 61 } your visit to Mr. Beard?

A. Yes.

Q. Do you want to correct that testimony now and say that it was going on in the preceding year and was concluded the month before you saw Mr. Beard?

A. I said negotiations had gone on previous, in the previous year.

Q. And my recollection is you stated the negotiations lasted for six to nine months?

A. They were long, drawn-out, yes, sir.

Q. Didn't you say they lasted for six to nine months?

A. Yes.

Q. What did your reference to three years mean? What did you intend to convey to The Court by that?

A. I didn't say three years.

Thomas L. Poe

Mr. Spence: I think it is obvious the witness is confused by these questions. I don't think that was his testimony with regard to the negotiations between Mr. Hooper and the United States Government. I think, if I recall correctly—maybe I am wrong—that his testimony with regard to this two to three-year period was when there was a previous, to that time, Mr. Nagel or Mr. Beard indicated to him that they had been in contact with the government two to
page 62 } three years prior to that time.

Mr. Lillard: I am giving the witness a chance to explain what his testimony is, Mr. Spence.

Mr. Spence: I think you have confused him by your questions, Mr. Lillard.

Mr. Lillard: I am sorry.

The Court: Go ahead.

By Mr. Lillard:

Q. You made a reference to something which occurred two or three years prior to January of 1967 when you went to see Mr. Beard and procured the open listing agreement. What did you refer to?

A. The fact that Mr. Beard and his associates had tried to sell their property and had actively been marketing their property.

Q. All right. At that time, you knew that the Post Office Department had bought the Hooper tract?

A. Yes.

Q. Lot?

A. Yes.

Q. You knew that they had concluded this purchase in December of '66, is that correct?

A. Yes.

page 63 } Q. And you procured the open listing agreement in January of '67?

A. Yes.

Q. At that time, did you know that the Post Office Department had considered buying the Beard tract at the same time it considered buying the Hooper tract?

A. Yes.

Q. How many times did you go to see the Post Office Department and ask them to renew their interest in this tract of land prior to the receipt of the telephone call from Mr. Matthews?

A. I did not.

Q. So that the first connection you had with the United States Post Office Department relating to this land was a call you received from Mr. Matthews, is that not correct?

A. Yes.

Q. Now, when you went to see Mr. Beard, on or about March 30, you had the option with you, did you not?

A. Yes.

Q. And for the record, the option is Plaintiff's Exhibit No. 11.

When you went there, you also had with you
page 64 } Plaintiff's Exhibit 10, this commission agreement, did you not?

A. Yes.

Q. You took it there with you, right?

A. Yes.

Q. You showed this to Mr. Beard before you showed him the option?

A. Yes.

Q. Isn't that your testimony?

A. Yes.

Q. You required that he sign this before you showed him the option, isn't that correct?

A. Yes.

Q. All right. And you signed it before you showed him the option?

A. Yes.

Q. Now, once you had secured the signature of Mr. Beard on the option, I believe you testified that you went to the Sheraton Motel and delivered that signed paper to Mr. Flora, is that correct?

A. The Stratford Motel or Hotel, yes.

Q. I am sorry—the Stratford Motor Hotel.

All right. Now, on any other occasion, did you
page 65 } leave your office and make a trip for the purpose of having a conference with anybody in the Post Office Department?

A. No.

Mr. Spence: I think—I am not sure what period of time counsel is discussing.

Mr. Lillard: I am talking about after delivery of the signed option to Mr. Flora, at any time from that point on.

The Witness: Repeat the entire question again.

Thomas L. Poe

By Mr. Lillard:

Q. From the date on which you delivered the signed option to Mr. Flora, did you ever leave your office and go to any other place for the purpose of interviewing a person known to you to be connected with the Post Office Department?

A. No.

Q. Now, you testified, if I recall correctly, that you went for Marine Corps Reserve duty on April 15, 1967?

A. Approximate date, yes.

Q. You were going for one month?

A. Yes, sir.

Q. So that you returned on May 15th?

A. Approximately, yes, sir.

page 66 } Q. You testified that on May 15th you went to see Mr. Nagel. Do you testify that on the very day that you returned from your Reserve Duty with that Marine Corps, you went to see Mr. Nagel?

A. No, sir; I returned on the 12th and went to see Mr. Nagel on the 15th.

Q. All right. It was on the 15th that he told you that he had a contract from the Post Office Department?

A. To the best of my recollection, yes, sir.

Q. Well, now, are you sure that it was the 15' day of May on which this occurred?

A. To the best of my recollection.

Q. Could it have been the 15' day of June?

A. No, it is the best of my recollection the 15th of May.

Q. Was it prior to that visit or after that visit to Mr. Nagel that you undertook to call Mr. Finegan and discuss this matter with him?

A. No, I called Mr. Matthews. Mr. Matthews in turn—

Q. I am sorry, perhaps I stated the matter poorly.

Was it before or after May 15, 1967, that you called Mr. Finegan?

A. It was after May 15, 1967 I talked with Mr. Finegan.

page 68 } Q. Had you ever talked to Mr. Finegan on any prior occasion?

A. No, but I had talked to his representative, Mr. Matthews and Mr. Flora, on several occasions.

Q. The fact that they are his representatives is your idea. Mr. Finegan didn't tell you that they were his representatives, did he?

A. No, but Mr. Flora presented his badge as being a special

agent for the U. S. Post Office Department and he was taking his duty from Mr. Matthews who is a subordinate to Mr. Finegan.

Q. How did you come by the information that either of these people is a subordinate to Mr. Finegan?

A. Mr. Matthews indicated to me that he was his superior and handled the real estate, the settlement.

Q. Do you know whether Mr. Matthews and Mr. Finegan occupy the same office in the Post Office Department?

A. When you say office, you mean the same room?

Q. Same room.

A. I don't know.

Q. Have you ever been in the Post Office Department to check with anybody about this contract?

A. No.

Q. Did you ever know where Mr. Finegan's
page 69 } office is?

A. They wouldn't tell me.

Q. Did you ever know where Mr. Matthews' office is?

A. No.

Q. Did he refuse to tell you?

A. Yes.

Q. He refused to tell you where his office was?

A. All he told me was that he worked for the Post Office Department and that that was it. It was out of his hands at this time.

Q. Well, did you ever learn where Mr. Flora's office is?

A. Roanoke, Virginia.

Q. On May 15th, you said you went to see Mr. Nagel. On that day did you see Mr. Beard?

A. To the best of my recollection, no.

Q. You mean Mr. Beard was not there or you chose to see Mr. Nagel?

A. Mr. Nagel had handled, I believe, as Mr. Beard's accountant, and Mr. Nagel has all the facts and figures and so forth on these properties, and usually he has Mr. Nagel speak for him.

Q. How do you know that, Mr. Poe?

A. Because he told me that.

page 70 } Q. Who, Mr. Beard told you that?

A. Yes.

Q. When did he tell you that?

A. When I met him in January of '67.

Thomas L. Poe

Q. Thereafter, did you call Mr. Nagel in each case then instead of Mr. Beard?

A. No, I first asked for Mr. Beard and then if Mr. Beard was not in I spoke to Mr. Nagel.

Q. Well, had you been told that Mr. Nagel was his spokesman? Why didn't you call Mr. Nagel?

A. Because Mr. Beard was the trustee for the Merrifield properties and he had the right to sign, or whatever—had to take steps.

Q. He also had the right to speak for himself, didn't he?

A. I don't know.

Q. You don't know whether he had the right to speak for himself or not?

A. I don't know what their relationship is regarding their activities.

Q. You are satisfied Mr. Nagel had the right to speak for him but you are not satisfied that he had the right to speak for himself?

page 71 } A. No, I said Mr. Nagel had the right to furnish information to him that was pertinent regarding any sale or option or figures regarding the property.

Q. But how about Mr. Nagel's authority to furnish it to you? Did he have authority?

Mr. Spence: I am not real sure what these questions are about. If he is going to deny that Mr. Nagel had the authority, I think he should amend his pleadings. If he is not, we should get on to something pertinent.

Mr. Lillard: What pleadings should I amend?

Mr. Spence: I think you should address your objection to The Court.

Mr. Lillard: I would like to know what he is talking about.

The Court: Go ahead. He has made no objection.

By Mr. Lillard:

Q. Do you recall that Mr. Beard was not there on May 15 when you went to his office?

A. Yes.

Q. When was the next time you tried to see Mr. Beard after May 15th?

A. On several occasions.

Q. Would you answer my question, please? When

page 72 } was the next time after May 15th?

Thomas L. Poe

A. I called him by telephone on several occasions.

Q. All right. I would like to ask the question again: When was the next time you saw Mr. Beard after May 15th?

A. To the best of my recollection, I didn't see him again.

Q. All right. When was the next time you talked with Mr. Beard after May 15th?

A. Before their group was to meet regarding whether or not I had a commission due and payable.

Q. Can you give me an approximate date? Was it in May?

A. To the best of my recollection, it was May.

Q. It was in May. And at that time he told you that his group was going to meet and discuss whether or not you were entitled to a commission?

A. To the best of my recollection. It could have been later. But if it was later, it was two weeks or it was a week, but it was right in that period.

Q. Now, did you talk to Mr. Nagel at that time?

A. I believe Mr. Beard conferred with Mr. Nagel.

Q. On what do you base that belief?

A. He said he was standing right next to him page 73 } in the office.

Q. You didn't confer with Mr. Nagel?

A. I did confer with Mr. Nagel several times. Whether it was that occasion or not, I am not sure.

Q. Then the answer to my question that I asked you, whether or not on the date which you just testified about, when you talked to Mr. Beard, I asked you if you talked to Mr. Nagel. Your answer to that is, you don't recall?

A. I could have.

Q. You could have?

A. Yes.

Q. Then, after the day of May 15th on which you said you went to the office and you talked only with Mr. Nagel, am I correct so far—

A. To the best of my recollection.

Q. Have you conferred face-to-face with Mr. Nagel since that time?

A. Yes.

Q. You did not *talke* to—after that, you have never conferred face-to-face with Mr. Beard, is that correct?

A. Only by telephone.

Q. When was that?

Thomas L. Poe

A. That was at the time I told him I would seek
page 74 } legal advice if they did not honor my agency.

Q. What was the date of that meeting, this face-to-face encounter?

A. I don't recall.

Q. It was not May 15?

A. I don't recall.

Q. Did you not testify that on May 15 you saw Mr. Nagel and on that date he said they had a contract; on that date he told you that you had not been included?

A. To the best of my recollection, but this was before the group met, which was later, either in—later in May or in June.

Q. Then did you confer with Mr. Nagel after the group met?

A. I conferred with Mr. Beard and Mr. Nagel.

Q. Directly or by telephone?

A. By telephone.

Q. But you didn't see either one of them in person?

A. They were so hard to get hold of. If you called you might not hear for several days from them.

Q. You knew where their office was?

A. Yes.

Q. Now, I hand you Plaintiff's Exhibit No. 12
page 75 } which you have identified as a letter that your attorney wrote to Mr. James Wilson, assistant general counsel, real property division of the United States Post Office Department. I ask you if you conferred with Mr. Spence about that letter before it was dispatched?

A. I don't know.

Q. You don't know whether you conferred with Mr. Spence about that letter?

A. I conferred with Mr. Spence before this letter was mailed. I don't know specifically about this letter.

Q. Did you see the letter before it was mailed?

A. Possibly.

Q. But you don't remember whether you did or you didn't?

A. I probably did, but I don't recall.

Q. Mr. Poe, while you were away from your office on Marine Corps Reserve Training, beginning on or about April 15 and continuing, I believe you now say, to May 12th—

A. It is a 30-day stiuation and it just depends on how the days fall. If it is a weekend, you come home maybe a couple of days early. It just depends on how the days fall.

Q. During that period, your office remained open?
A. Yes.
Q. You had a telephone answering service?
page 76 } A. I had a secretary.
Q. Was the telephone answering service available to you?
A. Yes, but I also had a secretary.
Q. Did you have a secretary when the calls were coming in which we stipulated from Mr. Matthews and Mr. Flora?
A. I had a secretarial answering service at that time.
Q. But you didn't have a full-time secretary?
A. No, sir.
Q. From April 15, let's say, to May 1st, you had a secretary in your office?
A. Yes.
Q. Were you advised of any calls to you from either Mr. Beard or Mr. Nagel during that period?
A. Yes.
Q. Would you tell me what you were advised was the content of those calls?
A. They wanted to know the status of the option.
Q. And I believe you testified that on one occasion you called Mr. Matthews?
A. Yes.
Q. This was on—
A. No, excuse me. On several occasions I called
page 77 } him.
Q. On several occasions you called Mr. Matthews?
A. Yes.
Q. Did you talk to him on several occasions?
A. Yes.
Q. Did you report to Mr. Nagel or to Mr. Beard the results of your conversations?
A. Yes.
Q. Did you ever prepare or have your secretary or have anyone prepare for you any kind of document which would have the legal effect of extending this option?
A. No.

Mr. Lillard: I have no further questions.

Thomas L. Poe

REDIRECT EXAMINATION

By Mr. Spence:

Q. Mr. Poe, what were your duties as an agent with regard to this particular parcel of property?

A. Procure a ready, willing and able buyer.

Q. Is that set out in your listing agreement?

A. Yes.

Q. That listing agreement, does it indicate to you anything about preparation of option extentions?

A. No.

page 78 } Q. Was there anything in your discussions with the principals to this that indicated to you that this was part of your duty?

A. No.

Q. Now, you say that on the 30th of March, 1967 when you took this commission agreement and the option along with you to Mr. Beard's office where you met with him and Mr. Nagel—

A. Yes.

Q. What, if anything, in that commission agreement referred to the Post Office?

A. It stated that I was the procuring cause and instrumental in bringing this client to them.

Q. Did it state who the client was?

A. Yes, United States Post Office Department.

Mr. Lillard: I think that agreement speaks for itself, Your Honor.

The Court: I think it does, too, Mr. Spence.

Mr. Spence: I just wanted to make certain The Court knew that the commission agreement did have on there—he was not trying to hide the principal, I mean.

The Court: All right.

Mr. Spence: The person who was giving the option, taking the option.

page 79 } By Mr. Spence:

Q. I think you testified you went there on March 30, 1967?

A. Yes.

Q. Now, the commission or the option expired on what date now?

A. Thirty days later.

Q. On or about then?
A. First of April—First of May, excuse me.
Q. First of May, 1967?
A. Yes.
Q. Do you know when the contract was signed?
A. Between the—

Mr. Lillard: We have stipulated how it is dated, if that is what you mean?
Mr. Spence: When it was dated.
The Court: It will speak for itself.

By Mr. Spence:
Q. Do you know when the property changed hands?
A. Specific date? Yes, sir.

Mr. Lillard: I thought we had stipulated the deed, Your Honor.
Mr. Spence: Very well, Your Honor.

page 80 } By Mr. Spence:
Q. I think you were asked with regard to your discussion with Mr. Finegan the sequence, and you indicated, I think, that you had called Mr. Finegan after you had talked with Mr. Beard?
A. Yes.
Q. Is that correct?
A. Yes.

Mr. Spence: I have no further questions, Your Honor.
Mr. Lillard: I have none.
The Court: Let me ask you a couple of questions, Mr. Poe.
Did anybody, did Mr. Beard or Mr. Nagel, tell you the contract was off with the Post Office Department? Did they ever revoke your authority?
The Witness: No, sir.
The Court: Did you ever hear from anybody in the Post Office Department that they were no longer interested in this property?
The Witness: No, sir.
The Court: When you got this commission agreement signed by Mr. Beard and then showed him the option
page 81 } agreement, did he indicate to you in any way that he had been misled to tricked?

The Witness: No, sir.
The Court: All right. Step down.

* * * * *

page 94 }

* * * * *

EDWARD KEMPER BEARD being first duly sworn was examined and testified upon his oath as follows:

DIRECT EXAMINATION

By Mr. Lillard:
Q. Please state your name.
A. Edward Kemper Beard.
Q. Where do you live, Mr. Beard?
A. In Winchester, Virginia.
Q. Do you do business in this area?
A. Yes, sir; I do.
Q. Have you at any time owned an interest in property at the intersection of Prosperity Avenue and Lee Highway?
A. Yes, sir.
Q. Said piece of property containing some four and a half acres or thereabouts?
A. Yes.
Q. When you originally acquired an interest, how much acreage was involved?
page 95 } A. There was five acres, five-plus acres.
Q. What interest did you acquire? Did you take title to the property?
A. I took title.
Q. In your name individually or in your name as trustee?

Mr. Spence: I beg your pardon. I hate very much to interrupt, but I understand there are some witnesses here, at least people who might testify, that are not parties. I would ask at this time that the rule be imposed as to those persons.
The Court: I am afraid you are too late now. I asked you when the court convened this morning if you wanted a rule on the witnesses. You said, no.
Mr. Spence: At that time.

Edward Kemper Beard

The Court: I think your motion comes too late. Motion denied.

Mr. Spence: Note my exception, if Your Honor please.

I have particular regard to Mr. Hooper.

Mr. Lillard: I am asking him to leave the room. I was not aware that he had come into the room.

Mr. Spence: I am sure you were not.

page 96 } By Mr. Lillard:

Q. You acquired a title as trustee, I believe you testified, is that correct?

A. Yes, I acquired a title personally in me and my wife's name. I believe it was just mine at the time because I was a widower at the time.

At a later date it was changed to trustee.

Q. And you held this title as trustee for a syndicate?

A. Yes.

Q. Now, this property was ultimately sold by you as trustee?

A. Yes.

Q. To whom?

A. To the Post Office Department.

Q. When did you first become aware that the Post Office Department was interested in this piece of property?

A. Well, when we had a contract with Mr. Hooper to purchase our property to put in with his to sell to the Post Office Department. This was in, I believe, March of 1966.

Q. Now, was that contract with Mr. Hooper performed or executed?

A. No, it wasn't.

Q. Did a default occur?

page 97 } A. Yes.

Q. When did you first meet Mr. Poe?

A. I believe I met him on the 5th of January, 1967.

Q. At that time, did someone introduce him to you?

A. I believe he introduced himself.

Q. Did he come to your office?

A. Yes.

Q. Where is that?

A. It is 308 Dominion Road, Virginia.

Q. Did he state the purpose of his call?

A. Yes, I believe he wanted to list the property.

Q. Did you give him a listing?

Edward Kemper Beard

A. Yes, sir.

Q. Have you seen the open listing agreement that is in evidence here?

A. Yes, that is it, the same one.

Q. That is the one that you signed on that day?

A. Yes.

Q. Is it not?

A. Yes.

Q. Now, when did you next see Mr. Poe?

A. I don't recall seeing him any more until he brought the option. I may have, but I don't recall.

Q. Do you recall talking to him in the meantime?

page 98 } A. I don't recall talking to him myself, no, sir.

Q. Do you recall the date on which he brought the option?

A. Just from, I believe it was on March 30th.

Q. Did he call you before he came to your office on that day?

A. Yes, he called me the same day.

Q. And did he tell you that he had a person interested in buying your property?

A. Yes.

Q. Did he tell you who it was?

A. No.

Q. When he came to the office, what was the first paper he exhibited to you?

A. The Commission Agreement.

Q. At that point, had he told you who the interested buyer was?

A. Not at that time.

Q. You signed the Commission Agreement?

A. Yes.

Q. Did you confer with Mr. Nagel before you signed?

A. Yes, I did.

Q. Did Mr. Poe sign in your presence?

page 99 } A. Yes.

Q. Did he then show you the option?

A. Yes.

Q. And that option was the one which is in evidence here today, which I believe you saw?

A. Yes, when Mr. Spence showed it to me.

Q. Now, when did you next see Mr. Poe?

Edward Kemper Beard

A. I really don't recall. I know it was sometime after the option had expired.

Q. Did you see him between the date of the option, March 30, 1967 and the date of its expiration on May 1, 1967?

A. No, I didn't.

Q. Did you talk to him between those two dates?

A. I don't recall talking to him.

Q. Now, you were aware, of course, that on May 1, 1967 this option expired?

A. Yes, I was.

Q. When did you next hear from the Post Office Department?

A. I believe it was about the 6th of June.

Q. Had you heard from Mr. Poe in the meantime?

A. No, I don't believe so.

page 100 } Q. What message came to you on the 6th of June?

A. That Mr. Finegan from the Post Office Department wanted me to call him.

Q. Did he state why he called?

A. Yes, he wanted to see us about the Merrifield property as we called it.

Q. Did you go to see him?

A. Yes, sir.

Q. Who went with you?

A. Mr. Nagel.

Q. When you got there, did he undertake to buy this property from you?

A. Yes, he did.

Q. Did he make you an offer?

A. Yes, he did.

Q. Did he tender a check?

A. Yes, he had a check.

Q. Was that offer for more or less than your listed price of $1.25 a square foot?

A. It was less.

Q. Did you converse with Mr. Finegan concerning the suitability of the price he was offering?

A. Yes.

page 101 } Q. What did he offer, by the way? What was the price for the property which he offered?

A. I don't recall the exact figure. I believe it was around $225,000.

Edward Kemper Beard

Q. Was it the price at which you ultimately sold it to him?
A. Yes, it was.
Q. Did he ever increase his offer in any way?
A. No, he didn't.
Q. Did you ask him to increase his offer?
A. Yes.
Q. Did you accept the offer on that day?
A. No, I didn't.
Q. Did you talk to him about the question of agency?
A. Yes, I did.
Q. Do you recall what you told him?
A. I told him that we did have it listed and that the Post Office had an option to purchase the property. We did have an agreement with the agent and that I would have to—well, we talked somewhat about the price, that we could get a bigger price for it, of course, and then the fact that until we resolved this question, I guess you might say, as far as the commission was concerned, that I should seek some legal advice before I signed any such contract.

page 102 } Q. Did you seek legal advice?
A. Yes, I did.

Q. What was the advice?
A. The advice was that we did not owe Mr. Poe a commission and that we were free to sell the property.

The Court: Was that in writing?
The Witness: No, sir.

By Mr. Lillard:
Q. After receiving that advice, what did you do with respect to the offer made to you by Mr. Finegan?
A. After receiving that advice, we signed a contract with the Post Office Department.
Q. Did you confer with your co-owners?
A. Yes.
Q. Was liability for a commission discussed with the co-owners?
A. Yes.
Q. Was that a factor in arriving at the decision to accept the offer made by the Post Office Department?
A. Yes, it was, since it was a lower figure.
Q. Had you been told that you were liable for the commis-

sion, would you have accepted the figure made by the Post Office Department?

page 103 } A. No, sir.

Q. Had you heard from anyone directly or indirectly concerning the interest of the Post Office Department in buying this property between May 1, 1967 and June 6, 1967?

A. No.

Q. So that from the date of expiration of the option, the first communication was the call from Mr. Finegan which you have testified you received on June 6?

A. Yes.

Q. Did you see or hear from Mr. Poe on or about May 15, 1967?

A. No.

Q. Did you receive a call from Mr. Poe or communication from Mr. Poe after the contract with the Post Office Department had been signed?

A. Yes, there was a phone call.

Q. Did he demand that you pay him a commission?

A. Yes.

Q. Did you tell him that you would or would not?

A. No, I don't recall the conversation at that time. Since we had discussed it with the other partners and had sought legal advice, that we would not have to pay a commission, I don't recall, but I don't believe there would have

page 104 } been any reason to say that he was due a commission.

Q. Do you recall whether or not Mr. Nagel was present when you were talking with Mr. Poe?

A. I don't recall.

Q. Is Mr. Nagel employed by you?

A. Yes, he is.

Q. In what capacity?

A. As accountant.

Q. Is he one of the parties to the syndicate for whom you held title to this property?

A. Yes.

Q. Were there other parties to the syndicate—Mr. Robert Allen, Mr. Eugene Forman, Mr. William Champion, Mr. R. M. Leigh—it appears in the records of this trial, L-E-I-G-H-T—is that correct? It is L-E-I-G-H, isn't it?

A. That's right, sir.

Edward Kemper Beard

Mr. Lillard: I think the records of the trial should be amended to show the correct spelling of this defendant—

And Harold Umstadter.

The Witness: Yes.

By Mr. Lillard:

page 105 } Q. While the contract with Mr. Hooper was being negotiated, who handled the negotiations for the syndicate?

A. Who handled the negotiations for the syndicate?

Q. Yes, while the contract with Mr. Hooper was being negotiated, who handled the negotiations for your syndicate?

A. I handled them myself.

Q. You did?

A. Yes, sir.

Q. Was that true generally, that you spoke for the syndicate?

A. On most occasions.

Q. Did you ever advise Mr. Poe or anyone else that Mr. Nagel was authorized to speak for you?

A. I don't believe so.

Q. Well now, do you recall the price that was set up in the contract with Mr. Hooper?

A. Yes.

Q. What was the price in that contract?

A. It was a $1.25 a foot.

Q. Do you know the price at which Mr. Hooper sold the adjoining property to the—

Mr. Sanders: I object to this line of questioning. First of all, I don't know what the relevance would be.

page 106 } Secondly, that anything he knows about this is hearsay of the rankest sort. He couldn't know, himself.

I would object to it.

The Court: He might know. I don't know how it is relevant, though, Mr. Lillard.

Mr. Lillard: Well, I think that the Hooper tract next door, in fact, was sold to the Post Office Department at a considerably lower price than the $1.25 a square foot mentioned in the option or the figure at which the Beard tract ultimately was sold to the Post Office Department.

The Court: How is that material whether the man is en-

titled to his commission or not? How does that affect liability for commission?

Mr. Lillard: I think it shows a perfectly valid reason why the Post Office Department didn't exercise its option.

Mr. Sanders: I don't know that that is something for Mr. Beard to testify to in any event. I believe Mr. Lillard also has a deposition which he is going to enter with testimony of the Post Office Department.

Mr. Lillard: May I ask The Court, then, to simply take judicial notice of the deed which is a part of its record from Mr. Hooper to the Post Office Department?

The Court: Defendant's Exhibit No. 1.

page 107 } (The document referred to was marked Defendant's Exhibit No. 1 and received.)

By Mr. Lillard:

Q. Did the Hooper tract adjoin your four and a half acres?

A. Yes, it did.

Q. Did it surround your four and a half acres?

A. Completely, I believe.

Q. It bordered on which sides?

A. On the east and south.

Mr. Lillard: May I exhibit the plat to the witness? I think that would help to make clear the relationship between the Hooper tract and the tract here.

The Court: Here is another one.

The Witness: The Hooper tract was known as the Dewey tract which comes from Lee Highway, running on Lee Highway and coming around to Prosperity Avenue.

By Mr. Lillard:

Q. Is north shown on that plat?

A. I don't see it.

Q. Here is a plat which does show it.

Would you tell The Court on which sides of your property it adjoins the Hooper tract?

page 108 } A. On the south and east—south and east sides.

Q. Did you receive any communication from Mr. Poe be-

tween March 30 and May 1 relative to extension of the option by the United States Post Office Department?

A. No.

Mr. Lillard: I believe that is all.

The Court: All right, Mr. Sanders.

CROSS EXAMINATION

By Mr. Sanders:

Q. Mr. Beard, I believe stated the first time you heard of Mr. Poe was on January 5 of 1967, is that correct?

A. Yes, sir.

Q. Before that, had you received any phone calls concerning him from Mr. Unstadter that he would be over to see you?

A. I don't recall. It may have happened.

Q. Would you normally, or did you give listings to agents who walk in the door, people you didn't know?

A. On occasions.

Q. On occasion.

Do you just not recall whether you knew anything about Mr. Poe on the 5th of January or not, or knew how he came to you?

page 109 } A. I believe he told me about knowing Mr. Umstadter.

Q. Now, I believe you also stated—let me go back a moment—in this listing agreement, it gave Mr. Poe authority to put a sign on his property, put a sign on the property, is that correct?

A. I believe so, yes.

Q. Did you see that sign on the property?

A. Yes.

Q. After that time?

A. Yes.

Q. Had any other agents been authorized to put signs on the property?

A. Yes.

Q. Were any other signs in fact on the property at this time?

A. I don't believe so.

Q. Now, you stated that after the 5th of January, you did not see Mr. Poe again until March 30, is that correct?

A. Yes, sir.

Edward Kemper Beard

Q. The date the option was brought.

Do you recall seeing him relative to another piece of property and giving him a listing, as a matter of fact, on a piece you owned in Vienna? Do you recall that?

page 110 } A. Now that you mention it, I do recall it.

Q. This was prior to March 30, the date of this option?

A. I didn't recall.

Q. So, during the time period we are talking about, Mr. Poe actually had two listings from you on two different pieces of property.

Do you recall any other times now that you may have seen him prior to the option being brought to you?

A. No, I don't.

Q. Do you recall now any times you may have talked to him during that period of time?

A. It is possible, you know, that I could have talked to him but, as I say, I don't recall it.

Q. Now, you referred to negotiations involving Mr. Hooper. What period of time were you talking about?

A. I believe it was from March of '66 until, I would say, 90 days, plus I believe two other 30-day extension, so this would be about five months there.

Q. From March until the fall of '66?

A. Yes.

Q. Late fall. These were negotiations between yourself, your group and Mr. Hooper, is that correct?

page 111 } A. That's right.

Q. Now, you say, I believe, that on the 30th Mr. Poe brought the option to you with a Commission Agreement, is that correct?

A. Yes.

Q. And the Commission Agreement, when you saw that, you knew he had secured an option from, did you not, that it was the Post Office Department?

A. It states in the Commission Agreement that, you know, states the Post Office Department.

Q. He didn't hide from you who he had gotten the option from?

A. No.

Q. Now, at that time you signed the Commission Agreement, is that correct?

A. That's right.

Edward Kemper Beard

Q. Was that voluntary on your part?
A. Yes.
Q. Now, what, if anything, did you state to Mr. Poe at that time, if you recall, about the Post Office Department?
A. I read the option. It seemed to me, you know, that they were interested in it. I don't really recall much
page 112 } of the conversation other than, you know, just discussing the option.
Q. So, from the time you gave Mr. Poe the listing on the 5th of January until this time, you had had no contact with the Post Office Department, had you?
A. No.
Q. Or you acting for your group, I mean—you had no contact with them during that period of time, is that correct?
A. No, that's correct.
Q. Now, from the date of the option until the middle of April, how many times did you talk to Mr. Poe, if you recall?
A. I don't recall.
Q. During this period of time, did you, yourself, have any contact with the Post Office Department?
A. None at all.
Q. Do you recall talking to Mr. Poe at all prior to the middle of April, about the status of the option?
A. I could have, but I don't recall.
Q. Do you recall talking to Mr. Poe or receiving any calls in your office from Mr. Poe after the middle of April until the date of the expiration of the option?
A. I don't recall.
page 113 } Q. Do you and Mr. Nagel or did you at this time share an office together?
A. No.
Q. Were you in the same building?
A. Same building, yes.
Q. Were you on the same phone or different phones?
A. Different phones.
Q. Different phone numbers?
A. No, it is the same phone number.
Q. Same phone number. Did you have any knowledge of any calls, Mr. Nagel receiving any calls from Mr. Poe during this time, that you can recall?
A. I wouldn't necessarily know this.
Q. Did you rely on Mr. Nagel's advice during this trans-

action? In other words, did you consult with him about the status of this and what you should do, and so forth?

A. Yes, he was a member of the syndicate and therefore—

Q. Could he also speak? Was he an equal member, equal partner?

A. I don't believe so, no.

Q. As the end of the option period approached, did you call Mr. Poe or did he call you towards the beginning of May?

page 114 } A. Near the end?

Q. Yes, the beginning of May, the end of the option period.

A. I don't believe so.

Q. Neither of you contacted each other? Did Mr. Nagel contact Mr. Poe or try to during this time, do you know?

A. I believe he did, yes.

Q. Did Mr. Poe, to your knowledge, contact Mr. Nagel back?

A. I don't believe so.

Q. Did you ever discuss with Mr. Nagel what was going on with regard to the option?

A. Yes.

Q. Did you discuss Mr. Poe with Mr. Nagel?

A. Wondered what he was doing about it. Discussed that.

Q. When did you next hear that Mr. Poe had contacted Mr. Nagel?

A. I believe it was after we had signed the contract with—

Q. That was the next thing you recall hearing from Mr. Poe, is that correct?

A. Yes.

Q. Did you do anything on May 1 to see

page 115 } whether the Post Office Department was going to accept the option?

A. No, I didn't.

Q. Did the information come to your through Mr. Nagel that he had been in contact with Mr. Poe on this last day of the option to find out if they were going to accept it or not?

A. I don't recall.

Q. On May 1, do you recall discussing the option at all?

A. The day it expired?

Q. Yes, sir.

A. I am sure we discussed the fact that, you know, it had expired.

Edward Kemper Beard

Q. Did you attempt to find out what was going on that day?
A. No, I didn't.
Q. Could you or Mr. Nagel at your direction or as your partner, have contacted Mr. Poe on this day to find out? Could that have happened?
A. Oh, yes, it could have happened. We were interested so we were anxious to know.
Q. Is it likely that Mr. Poe and Mr. Nagel or someone had some contact on this day?
A. I would think so, yes.
page 116 } Q. And you testified that to your recollection the next time you heard from Mr. Poe was on June 6, or when was it?
A. I didn't say.
Q. You don't know?
A. No, I said it would have to be sometime after the contract had been signed by the Post Office Department.
Q. When did they sign the contract? Same day?
A. No, I believe it was sometime in the middle of June.
Q. After the date of the contract, is that what you mean, June 14, I believe it is?
A. It would be sometime after that.
Q. Are you sure he didn't contact you after the first time you talked to Mr. Finegan?
A. I don't recall.
Q. Are you positive that he didn't contact you between May 15 and June 6 in any way?
A. No, I don't recall hearing anything from Mr. Poe.

The Court: That is not what he asked you.
The Witness: No, sir.
The Court: He asked you if you were positive that he didn't call you. Do you deny—
page 117 } The Witness: No, sir; I am not positive.

By Mr. Sanders:
Q. Do you recall any message from Mr. Poe asking you to call him, you or Mr. Nagel?
A. I don't recall.
Q. Do you retain telephone messages in your office, records of them?
A. Yes.
Q. You save them?

Edward Kemper Beard

A. No, sir.
Q. You do not save them?
A. No, sir.
Q. Do you get a message from a secretary when someone calls and wants you to call?
A. Yes.
Q. And you do not recall getting any of these from Mr. Poe?
A. No, sir.
Q. Could you have and not recall?
A. It is possible.
Q. Did you make any attempt to contact Mr. Poe after the option period had expired?
A. I don't believe so.

page 118 } Q. You had been told by Mr. Poe, had you not, that he was, had gotten orders to report for Reserve Duty in Boston in the Marines prior to him leaving? You were aware of that, were you not?
A. I was aware that he was out-of-town, yes, sir.
Q. Were you aware that he was on military duty?
A. No, I wasn't.
Q. How did you become aware that he was out-of-town?
A. I believe when Mr. Nagel was trying to reach him.
Q. Would it be a fair statement to say that on April 15th, until, say, the middle of May, that Mr. Nagel had more to do with this property than you did, with regard to dealing with Mr. Poe and finding out what is going on?
A. Just the fact that it being in the office, more than myself, and being interested in this as a partner.
Q. Now, this conference you say took place after the date of the contract was during a phone call from Mr. Poe to you?

Mr. Lillard: Which conversation is this?
Mr. Sanders: After the date of the contract.

By Mr. Sanders:
Q. The first time you say you recall hearing from him, after the expiration of the option—was this,

page 119 } under what circumstances?
A. I don't recall whether he was there or whether it was a phone call.
Q. Do you recall how the meeting came about, at whose suggestion?

Edward Kemper Beard

A. I don't.

Q. Now, prior to this time you said that on June 6 you met with the Post Office Department, Mr. Finegan, is that correct?

A. I believe that's right.

Q. First you had received a phone call from Mr. Finegan, had you not?

A. Yes, I think that was on June 6th.

Q. You met with him later?

A. A couple of days later.

Q. Couple of days later?

A. Yes.

Q. And this phone call from Mr. Finegan, what did he say to you?

A. He wanted to talk about the property at Merrifield.

Q. Did he say he was with the Post Office Department?

A. Yes.

Q. What did he say as best you recall?

page 120 } A. That he would like for me to come over, see him about it.

Q. Do you recall discussing Mr. Poe at this time?

A. I don't believe so.

Q. You are not saying that you did not discuss Mr. Poe at this time?

A. This was just more or less to set up an appointment so I am quite certain that we didn't discuss Mr. Poe over the phone at that time.

Q. If Mr. Finegan said you did discuss agency, would that be in error?

A. No, I wouldn't necessarily say it was error. I just say I don't recall.

Mr. Lillard: May I rise to be sure I understand what the question means here. Are you talking about the telephone conversation?

Mr. Sanders: Telephone conversation.

Mr. Lillard: While the appointment was being made?

Mr. Sanders: Yes, sir.

Mr. Lillard: Or during the appointment itself?

Mr. Sanders: Still on the telephone conversation.

The Court: Let us take an hour's recess for lunch.

(At one o'clock p. m. the luncheon recess was taken.)

Edward Kemper Beard

page 121 } AFTERNOON SESSION

The Court: You may proceed. Mr. Beard is on the stand.

Whereupon EDWARD KEMPER BEARD resumed the stand and testified further as follows:

CROSS EXAMINATION

By Mr. Sanders:

Q. Mr. Beard, I believe we were discussing the conversation of June 6 you had with Mr. Finegan when he called you.

I believe I asked you at that time whether you recall Mr. Poe's agency being discussed at all?

A. I definitely recall that it was mentioned.

Q. It was mentioned?

A. I say I don't recall that it was mentioned; I do not definitely recall that it was mentioned.

Q. After this, you agreed to meet with Mr. Finegan, is that correct?

A. Yes.

Q. Do you recall any discussion with Mr. Finegan over the telephone about any previous dealings concerning
page 122 } this property?

A. Me and Mr. Finegan?

Q. Yes.

A. No.

Q. Now, who went down to meet Mr. Finegan?

A. I went down and Mr. Nagel went with me.

Q. You say this was approximately two days later?

A. I believe so.

Q. Was this in Mr. Finegan's office in Washington?

A. Yes, it was.

Q. During that period of time, did you hear from Mr. Poe prior to meeting with Mr. Finegan?

A. Not that I recall.

Q. Now, was anyone else present at the meeting with Mr. Finegan besides yourself and Mr. Nagel and Mr. Finegan?

A. I believe there was another gentleman there that Mr. Finegan introduced us to. I believe he was from the legal department but I am not certain.

Q. You don't recall the name?

A. No, I don't.

Edward Kemper Beard

Q. At this time, did Mr. Finegan make an offer to you at this meeting for this piece of property?

A. Yes, he did.

Q. You stated this was for $225,000?

page 123 } A. Yes.

Q. This was the only offer he made at that time?

A. Yes.

Q. Now, I believe you also stated that you mentioned a higher price to him?

A. Yes.

Q. Can I take it that this was unacceptable to Mr. Finegan, the higher price?

A. Yes.

Q. Did he advise you of that?

A. Yes.

Q. Was that the first thing that was mentioned with regard to this property, the price? Is that the main purpose of your meeting, to arrive at a price or receive offers from Mr. Finegan?

A. He had a contract which we read stating that the Post Office Department was interested in the property and that he had an offer for us.

Q. This contract had the price of $225,000 in it, is that correct?

A. Yes.

Q. After you read that contract is when the subject of Mr. Poe's agency came up, is that correct?

A. Yes.

page 124 } Q. And was not the substance of this discussion of Mr. Poe's agency the fact of whether you could accept this price if you had to pay a commission and so forth?

A. Well, I believe I told him that I didn't know whether I could accept it or not but that I felt that I should seek legal counsel on it.

Q. You knew at this time, I take it, you and Mr. Nagel, if you accepted this price without a commission you would come out $6,000 ahead, is that correct?

A. Well, we either knew it at that point, yes—

Q. Or you figured it out?

A. Yes.

Edward Kemper Beard

Q. Now, up to this point you had discussed with Mr. Poe his agency?

A. No, I don't believe we did.

Q. Now, Mr. Beard, what was the status of this, of your, or in the syndicate's ownership of this property at this time? Were you making payments on it?

Mr. Lillard: I object.

The Court: Objection sustained.

Mr. Sanders: Your Honor, I think there intent, and of course their *bona fides* are at issue here, their necessity for selling the property and the need for it would
page 125 } go to show their intent with regard to Mr. Poe, how bad they had to sell it.

The Court: Objection sustained.

By Mr. Sanders:

Q. Let me go back one second. Do you recall Mr. Finegan discussing Mr. Poe's agency at this time?

A. I believe we brought up the subject of Mr. Poe. I don't recall what he said about it.

Q. Mr. Beard, you were trustee for this piece of property, is that correct? In other words, the record owner was under your name as trustee, is that correct?

A. Yes.

Q. You signed the listing agreement with Mr. Poe, is that correct?

A. That's correct.

Q. You signed all listing agreements, whatever they may have been—were in your name, were they not?

A. I believe so.

Q. You signed the Commission Agreement presented by Mr. Poe to you, is that correct?

A. That's right.

Q. You signed a contract with the Post Office Department as trustee, is that true?

page 126 } A. Yes.

Q. And the deed also, is that correct? You signed that as trustee?

A. Yes.

Q. So, anything to do with what was to be done with this property had to have your approval, did it not?

Eugene Hooper

The Court: Had to have his signature.
Mr. Sanders: Yes, sir.

By Mr. Sanders:
Q. Your signature?
A. Signature, yes.
Q. Your authorization.
During this period of time, from the time you met with Mr. Finegan to the time you signed the contract, how much time was that? Would approximately a week be correct?
A. I would imagine so. I believe we took the contract with us unsigned and that is when I went to seek legal advice.
Q. During this time did you contact Mr. Poe?
A. No.

Mr. Sanders: I believe that's all I have, Your Honor.
Mr. Lillard: I have no further questions of this witness.
The Court: Step down.
page 127 }

* * * * *

EUGENE HOOPER being first duly sworn was examined and testified upon his oath as follows:

DIRECT EXAMINATION

By Mr. Lillard:
Q. Would you state your name, please?
A. Eugene Hooper.
Q. Where do you live, Mr. Hooper?
A. 6415 Shady Lane, Falls Church, Virginia.
Q. Have you at any time been an owner, entirely or in part, of a tract of land at the intersection of Lee Highway and Prosperity Avenue in Fairfax County, Virginia?
A. No.
Q. Have you been the owner of a tract of land near that intersection?
A. Yes.
Q. Did you own it with your brother?
page 128 } A. Yes.

Eugene Hooper

Mr. Spence: I will object to the relevancy of these questions unless this is the particular piece we are talking about.

The Court: We have had so much talk about the sale of the Hooper tract I think we will go into it now. Objection overruled.

Mr. Spence: Note our exception, please.

By Mr. Lillard:

Q. Did you sell that piece of property, and if so, to whom?

A. United States Government. Yes, sir; we sold it.

Q. When did you make that sale?

A. I would have to check my records.

Q. Do you have your records with you?

A. Yes.

Q. I believe you may use those records to refresh your recollection.

A. Twentieth day of September, 1966.

Q. Do you know when that transaction was settled?

The Court: Is that the option or a contract?

The Witness: This is a firm contract with the U. S. Government.

page 129 } The Court: Contract of September, '66.

By Mr. Lillard:

Q. I hand you this paper and ask you if you recognize it? That is Defendant's Exhibit No. 1.

A. Yes.

Q. Does that appear to be a photo copy of your deed to the United States Post Office Department?

A. Yes, it does.

Q. What date does it bear?

A. First day of December, 1966.

Q. Does that deed state the consideration to you paid for the piece of property?

A. Yes.

Q. What again is the consideration?

Mr. Spence: I will object to this testimony. I see no relevancy between this—it is also in the other thing, too, Mr. Lillard. I have read those two depositions. They say, state the purchase price in there.

Mr. Lillard: I withdraw the question.

Eugene Hooper

By Mr. Lillard:

Q. Now, how long were you in the process of negotiation with the Post Office Department relative to this sale?

A. Approximately eight months, six or eight months.

page 130 } The Court: Prior to September?

The Witness: Prior to the date of the contract, yes.

By Mr. Lillard:

Q. During that period, did you make a contract to buy the property of Mr. Kemper Beard?

A. Yes.

Q. I hand you this paper and ask you—

A. My brother and I did.

Q. If you can identify that—look at these while you are at it—can you identify those, also?

A. Yes.

Mr. Spence: Again, Your Honor, I am going to object. I assume you are going to move these into evidence. I would interpose an objection to their introduction. I feel that these contracts, even though they might very well be for this particular parcel of land have nothing to do with whether or not—

The Court: I am inclined to agree with you but we have gone into so much of this in your case that I think we might as well continue and get it all in the record.

Objection overruled.

Mr. Spence: Very well.

page 131 } By Mr. Lillard:

Q. Would you state what these documents are?

A. Original contract and addendum, two addenda for extension of time, if I recollect correctly.

Q. Who are the parties to the contract and to the addenda?

A. My brother *any* myself and E. Kemper Beard and Pentagon Realty was the broker.

Q. Does that contract refer to a purchase of land that adjoins the land which you sold to the Post Office Department?

A. Yes.

Mr. Lillard: I would like to offer these in evidence.
The Court: And you are objection, Mr. Spence?
Mr. Spence: Yes, Your Honor.
The Court: Objection overruled.
The contract dated March 10, 1966 is Defendant's Exhibit No. 2 and the addendum dated 18 April, 1966 is Defendant's No. 3; and addendum dated August 10, 1966 is Defendant's No. 4.

(The documents referred to were marked Defendant's Exhibits Nos. 2, 3 and 4, respectively, and received.)

page 132 } By Mr. Lillard:
Q. Mr. Hooper, why were you interested in buying the Beard property?

Mr. Spence: Could Your Honor note our exception to that?
The Court: The record shows that you have excepted.
Mr. Spence: Thank you.
The Witness: The people with the government that I was negotiating with were interested in it.

By Mr. Lillard:
Q. Did you offer it for sale to the government?
A. Yes.
Q. Did they consider purchasing it?
A. They did for a time and then ruled it out the last few days.

Mr. Spence: If Your Honor please, I will object to this as hearsay.
The Court: Objection sustained.

By Mr. Lillard:
Q. Did the government buy that property or agree to buy it from you?
A. No.
Q. All right. Did you then purchase it from
page 133 } Mr. Beard?
A. No.
Q. So the contract was never executed?
A. Not fully.
Q. The contract to purchase, which has just been admitted into evidence, was never executed—

Eugene Hooper

The Court: Never *consumated.*

By Mr. Lillard:
Q. Never *consumated*—I'm sorry.
A. Right.
Q. While that contract was in existence, did you discuss this piece of property with any representatives of the Post Office Department?
A. Yes.
Q. Did any representatives of the Post Office Department communicate to you the fact that the department did not want to buy this piece of property?

Mr. Spence: I will object to that question.
The Court: Sustained.

By Mr. Lillard:
Q. Can you state the name of any representative in the Post Office Department with whom you negotiated concerning this piece of property?
A. Jensen, Warner and Finegan. I am not sure
page 134 } of the last one.—but something similar to Finegan.

Mr. Lillard: I have no further questions.

CROSS EXAMINATION

By Mr. Spence:
Q. As I understand it, you were then contracting to sell this property, contracting to purchase it with the hope to re-sell it, is that correct, to the government? Is that correct?
A. The Beard property?
Q. Yes, sir; you were talking contract with Mr. Beard with the expectation you would re-sell it to the government?
A. Yes.
Q. You expected to make a profit?
A. No.
Q. You didn't expect to make a profit?
A. No.
Q. You didn't expect to make a profit?
A. No.

Q. What was your purchase price under Mr. Beard's contract?

A. If I remember, $1.25 and we offered it to the government for the same price.

Mr. Spence: No further questions.

The Court: Thank you.

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page 135 }

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WILLIAM A. NAGEL being first duly sworn was examined and testified upon his oath as follows:

DIRECT EXAMINATION

By Mr. Lillard:

Q. State your full name, please.

A. William A. Nagel.

Q. Where do you live, Mr. Nagel?

A. 6518 Wilson Lane, Bethesda, Maryland.

Q. Where do you work?

A. 308 Dominion Road, Vienna, Virginia.

Q. Are you connected in your employment with Mr. Kemper Beard?

A. Yes, sir.

Q. Were you a member of the syndicate which purchased the property which has been the subject of considerable testimony here today at the intersection of Prosperity Avenue and Lee Highway in Fairfax County, Virginia?

A. Yes, sir.

Q. Have you come to know Mr. Thomas L. Poe?

A. Yes.

page 136 } Q. When did you first meet Mr. Poe?

A. January, 1967.

Q. What brought about your meeting with Mr. Poe?

A. He came to our office for the purpose of presenting or soliciting a contract to sell the subject land.

Q. Did you give him a listing on this property?

A. I did not personally.

William A. Nagel

The Court: Mr. Beard did?
The Witness: Yes, sir.

By Mr. Lillard:
Q. Did you see the listing which was signed by Mr. Beard?
A. Yes, sir.
Q. Did you see it on January 5 of 1967?
A. Yes, sir.
Q. I hand you Plaintiff's Exhibit 3 and ask you if that is the listing to which you have referred?
A. Yes, sir.
Q. Did you have occasion to confer with Mr. Poe in person on any occasion subsequent to January 5, 1967?
A. I believe I was present when he came to see Mr. Beard relative to another tract of land.

page 137 } Q. Did you confer with him subsequent to January 5, 1967 with reference to possible sale of this piece of property which was the subject of the listing you just identified?
A. Not to my recollection, no.
Q. Were you present on the 30th day of March when Mr. Poe has testified he came to the office of Mr. Beard?
A. Yes, sir.
Q. Did you talk with him on that day?
A. Yes, sir.
Q. Did you see the Commission Agreement which he brought with him on that day which is identified as Plaintiff's Exhibit No. 10?
A. Yes, sir.
Q. Did you discuss that with him, Mr. Poe?
A. I read it, discussed it with Mr. Beard. I thought about it for awhile. I couldn't quite understand what relevancy it might have, but failing to conclude anything I advised Mr. Beard it was all right to sign it.
Q. Now, when did you next communicate with Mr. Poe?
A. After the option was nearing its end, I made numerous calls to his office and on at least one occasion I think I got through to his wife.

page 138 } Q. Did you ever talk to Mr. Poe?
A. No. I left several messages.
Q. Do you know why you did not get to talk to Mr. Poe?
A. I understood that he was to be out-of-town.

Q. Did you receive any communication from him?
A. No.
Q. So that from the time of signing this option until May 1 of 1967, you had no communication from Mr. Poe?
A. I think you would back up a day or two there. I finally did get in touch, which would have been probably the last day or two of April, or maybe even the last day of April.
Q. How did you get in touch with Mr. Poe at that time?
A. He returned my call.
Q. So you talked to him by telephone?
A. Yes, sir.
Q. What was the subject of this conversation?
A. The fact that the option was about to run out.
Q. Did he offer any suggestions as to what might be done to keep it from running out?
A. No, except that he would get in touch and find out where it stood, meaning with Mr. Matthews, I presume.
Q. Did you hear further from him, that he had done this?
A. Not that I recall.

page 139 } Q. Now, when was the next time you were in communication with Mr. Poe as best you can recall?
A. It would have been sometime after we received word from Mr. Finegan.
Q. When did you receive word from Mr. Finegan?
A. It would have been sometime early in June.
Q. What word did you receive from him?
A. That he wanted to set up an appointment to discuss the purchase of the subject land.
Q. Did you go to his office for that purpose?
A. Yes, sir.
Q. Who went with you?
A. Mr. Beard.
Q. With whom did you confer there?
A. Mr. Finegan. There was another gentleman present; I don't recall his name.
Q. Did Mr. Finegan discuss with you, while you were in his office, the purchase of the subject piece of property?
A. Yes.
Q. Did he make an offer to purchase?
A. He presented a contract.
Q. What was the price stipulated in that contract for the property?

William A. Nagel

page 140 } A. $225,000.
Q. Did he tender a check?
A. He made it visible. He didn't tender it.
Q. Do you recall the amount of the check?
A. $10,000.
Q. Did you or Mr. Beard accept the offer on that occasion?
A. No, sir.
Q. Why didn't you accept the offer?
A. We didn't know for sure whether we had a right to sell at this point without being obligated to pay a commission.
Q. Was that important to you?
A. Very much so, yes.
Q. Why was that important to you?
A. Because of the differential in price.
Q. Did you discuss the possibility of agency with Mr. Finegan?
A. Only to acknowledge that there was an agent involved. To my knowledge Mr. Finegan didn't really have much to say about it.
Q. Did you ask Mr. Finegan for a higher price for the property?
A. Mr. Beard did, yes.
page 141 } Q. What did Mr. Finegan reply?
A. I would take it under advisement.
Q. Beg pardon?
A. No specific answer.
Q. Did he ever offer a higher price, to your knowledge?
A. No, he didn't.
Q. Did he ever tell you that he would not pay a higher price?
A. Not at that particular time, no.
Q. Did he at some subsequent time state that he would not?

Mr. Spence: Objection.
The Court: Sustained.

By Mr. Lillard:
Q. Did you or anyone acting for the syndicate subsequently execute the contract which had been tendered to you?
A. After consultation with legal advice, yes.

Mr. Spence: I don't think that question is responsive to the answer—the answer responsive to the question.

The Court: All right. It has already been testified to that they consulted somebody. Hasn't said who, yet.

By Mr. Lillard:

page 142 } Q. Who did sign the contract, if you know, for the syndicate?

A. Mr. Beard signed it.

Q. Mr. Beard?

A. Yes.

Q. Was a sale of the land made in accordance with the contract so signed?

A. Yes.

Q. Do you recall any conference with Mr. Poe during the month of May of 1967 in your office or by telephone?

A. I have no recollection of it, no.

Q. Do you recall a conference with him in June of 1967?

A. Yes. As I recall, he came to our office. I wouldn't know the date.

Q. Was it after the date on which you went to the Post Office Department and conferred with Mr. Finegan?

A. To the best of my knowledge, it would have been.

Q. When Mr. Poe talked to you on that occasion, I believe you said it was in your office?

A. Yes, sir.

Q. Did you discuss the contract with the Post Office Department?

A. No.

page 143 } Q. Did he ask you about it?

A. Yes.

Q. Did he demand a copy of it?

A. He asked for a copy.

Q. Did you give it to him?

A. No.

Q. Did you discuss the commission or his claim for a commission?

A. Not to my recollection, at that point.

The Court: Did he say whether or not the contract had been signed at the time of this conversation?

Mr. Lillard: I don't believe so.

By Mr. Lillard:

Q. Had the contract with the Post Office Department been signed when you conferred with Mr. Poe?

William A. Nagel

A. No, sir.
Q. It had not been?
A. No.
Q. Did you tell him whether the syndicate would or would not pay a commission?

Mr. Spence: I think he already said he didn't discuss this claim. As I recollect, his testimony earlier, in response to a question, there was no discussion at this time
page 144 } with regard to claim for commission.
The Court: Let him answer the question anyway.
Mr. Lillard: I withdraw the question if that was his testimony.
The Court: Didn't he ask you if the contract provided for a commission for him when he wanted to see the contract?
The Witness: He may have. I don't recall it.
The Court: If he said he did, you wouldn't deny it?
The Witness: Pardon?
The Court: If he said he asked you that, you wouldn't deny it?
The Witness: I couldn't.

By Mr. Lillard:
Q. Do you recall any further conference with Mr. Poe in person or by telephone on a subsequent date?
A. To the best of my knowledge, there was a meeting with Mr. Poe, myself and Mr. Beard at some subsequent date at which time he was told that the partners had agreed among themselves after seeking legal advice, he didn't have any commission coming.

Mr. Lillard: No further questions.

page 145 } CROSS EXAMINATION

By Mr. Spence:
Q. You indicated that you discussed prior, sometime towards the end of May, with Mr. Poe regarding this expiring option, is that correct?
A. Yes, sir; I was quite concerned at that time because I hadn't heard anything.

The Court: End of April, I think he said it was.

By Mr. Spence:

Q. End of April?

A. End of May, yes.

Q. Could that have been May?

A. No, it expired May 1st.

Q. You are confident it was the end of April, then?

A. Yes.

Q. Now, was it your testimony that you didn't recall whether he called you back again or was it, or is it your testimony that he did call you back or did not call you back, I beg your pardon?

A. My testimony was that I had made numerous calls to—

Q. I am talking about subsequent to that point in time when you called him, you indicated that you discussed this towards the end of that month to his wife, had gotten through to him, you then later, subsequent to that I think you testified, talked with Mr. Poe?

page 146

A. Right.

Q. All at the end of April?

A. Yes.

Q. My question now is whether or not—I think at the end of that conversation he indicated that he was going to meet or talk with Mr. Matthews and would then be back in touch with you?

A. I think the way he put it was he would get right on it.

Q. Now, my question to you now is whether or not, subsequent to that time, along the end of, say, the first of May, did he ever call you back again?

A. He may have. I don't have any recollection of it.

Q. So, if he actually were to testify that he did call you back, you couldn't deny that either, is that correct?

A. Yes.

Q. You have no recollection of it?

A. No.

Mr. Spence: I have no further questions, Your Honor.

page 147

The Court: Step down.

* * * * *

Dep.
Sept. 5, 1968
page 1 }

* * * * *

Falls Church, Virginia
Thursday, September 5, 1968

Deposition of JOHN L. FLORA, called for examination by counsel for the plaintiff, pursuant to notice, at the offices of Royce A. Spence, Esq., 311 Park Avenue, Falls Church, Virginia, before Caryl M. Emanuel, a notary public in and for the State of Virginia, beginning at 1:00 p. m., when were present on behalf of the respective parties:

FOR THE PLAINTIFF:
Royce A. Spence, Esq., 311 Park Avenue, Falls Church, Virginia,
and
H. Kendrick Sanders, Jr., Esq., 10560 Main Street, Fairfax, Virginia.

* * * * *

Dep.
Sept. 5, 1968
page 3 }

PROCEEDINGS

Whereupon, JOHN L. FLORA, was called for examination by counsel for the plaintiff, and after having been first duly sworn, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR THE PLAINTIFF

By Mr. Spence:
Q. Will you please state your name and occupation?
A. J. L. Flora, Virginia Real Estate Officer for the Post Office Department, domiciled in Roanoke, Virginia.
Q. How long have you been employed with the Post Office?
A. Since January 1960.
Q. What are your duties in that office?

A. Secure postal facilities for the Post Office Department in that region, which is mainly southwest Virginia.

Q. All right.

A. Due to an illness of the Real Estate Officer in the Washington area, I was transferred—not transferred, but asked to come up and do some work in Northern Virginia.

Dep. Sept. 5, 1968 page 4

Q. Um-hum. Now, were you working in Northern Virginia on or about March 1967?

A. Yes.

Q. Now, did there come a time when you received some directions with reference to a piece of property in Merrifield, Virginia?

A. On March 28th 1966 I was given orders due to a heavy workload of real estate officer Chesser in the case involving the Northern Virginia Area Facility has been reassigned to you.

Q. In March of '66?

A. March of '66.

Q. All right. Now, at that time in March of '66, did you have any idea as to where this was going?

A. No. Well, I had a general area to seek a site.

Q. Where was that general area?

A. I think we could call it near the intersection of Route 50 and 495.

Q. In that general area?

A. Um-hum.

Q. Did there come a time when you fixed on a more definite location than that?

Dep. Sept. 5, 1968 page 5

A. I submitted five sites to the Department for their review and perusal and select one of those.

Q. Now, was one of those sites located at Prosperity Avenue and Lee Highway in what is known as Merrifield?

A. I call it the Hooper site.

Q. O. K.

A. One that was selected.

Q. Where is that located?

A. On 29 and Prosperity.

Q. Would that be the southeasterly corner, I guess, of the intersection?

A. I forget my directions, but from what I remember there is a Texaco station on the corner.

John L. Flora

Q. Did there come a time you purchased the Hooper property or conducted negotiations with regard to that?
A. No, I didn't do that; that is done by the Department.
Q. You took no part in that then?
A. No.
Q. How did you arrive at five sites?
A. Normal real estate practices—going out and looking for them.
Q. You had certain criteria you had to meet?
A. I had size and location to go by.

Dep. Sept. 5, 1968 page 6

Q. Where is the Hooper tract located? You say, on the 29-211?
A. The front to 29 I guess it would be, the east side of 29, just at Prosperity.
Q. O. K. Did there ever come a time that property was settled on? Do you know?
A. Yes.
Q. When was that?
A. I don't know.
Q. Do you have an approximate date?
A. I got a call. We had, I think they use the term—

Mr. Lillard: (Interposing) Before you go any further, I want to enter an objection about Mr. Flora talking about things he learned by talking to others. This would be hearsay as to him.

By Mr. Spence:
Q. Do you have an approximate time as to when this transaction on the Hooper property took place?
A. No, I don't.
Q. O. K. You wouldn't have any idea at all at this time? Would your file reflect that or anything?
A. My file doesn't, but the Departmental file would say that.
Q. Would that be Mr. Matthews' file?
A. It may be.

Dep. Sept. 5, 1968 page 7

Q. O. K. Was that before or after March of 1967, would you say?
A. I think it was before March of '67. I am almost sure it was.
Q. O. K. It was settled on then?
A. Um-hum.
Q. O. K. Did there come a time you again were interested in the property directly behind this Texaco station?

A. Well, no. Here again this may be called hearsay, but I was given a call by Mr. Matthews, I think it was. We found we needed more land than we acquired in the Hooper tract and to see if I could find some adjoining land to it.

Q. What did you do as a result of that call?

A. Of course, made a trip up here and, of course, the tract we liked to have had would be on the roadside, and I found this sign, contacted whoever it was—Mr. Poe, I think.

Q. All right. I show you these pictures and ask you if you can identify this sign as being the one you just testified to?

(Handing to the witness.)

Dep.
Sept. 5, 1968
page 8 }

A. Can I see that? When were these pictures taken, may I ask?

Q. Those were taken around July of 1967, I think.

A. Um-hum. I don't know if the filling station was—

Q. (Interposing) I'm sure it was. Just, if you would, disregard the service station. Is that the sign, or did the sign look like that?

A. Well, the sign gave me information to call Virginia Land Company.

Q. You can't identify that sign from those pictures?

A. No, I'm not sure of that sign.

Q. You say there did come a time you called Virginia Land Company, then?

A. Um-hum.

Q. And, who, if anyone, did you talk to there?

A. Evidently my memory is dim, but it must have been Mr. Poe because he showed on the option I secured.

Q. Now, what conversation, if any, did you have with Mr. Poe over the telephone at that time?

Mr. Lillard: Objection. He said he talked to him on the telephone, that I can recall.

By Mr. Spence:

Q. You say you called Virginia Land Company?

Dep.
Sept. 5, 1968
page 9 }

A. It must have been in the latter part of March.

Q. All right.

A. In dwelling on the facts I have in front of

John L. Flora

me because my memory doesn't recall the day I called him.

Q. That refreshes your recollection, though?

A. Um-hum.

Q. You say you spoke with someone at Virginia Land Company?

A. Yes.

Q. Would you relate the substance of that conversation then?

A. I think I only made an appointment showing an interest in the land that lists as Prosperity Avenue.

Q. Um-hum. With whom did you talk to at that time, and did there come a time you met with whoever this was?

A. Yes—no. No.

Q. Who would that be?

A. Well, he is not here now, but I think it was Mr. Poe, and I am saying that because his name is on the option.

Q. Where did you meet with him?

A. In his office.

Q. Where was that located?

Dep. A. I'm not sure.

Sept. 5, 1968 Q. O. K. Do you recall what he looked like?

page 10 } A. Fairly young; I'd say about 30, 35 years old, something like that.

Q. Um-hum. What discussion did you have with him at that time at his office?

A. I showed an interest in the property and asked him if we could gain control of it through a site option, and he said —I'm not really sure what he said, but he said—it ended up with him securing an option for me, and I never did meet the people that signed the option.

Q. What did you understand at that time? He was an agent, then?

A. Yes.

Q. No question in your mind about that, then, that he was an agent and he did not own the land himself?

A. I understood he was an agent.

Q. All right. Did you say later on he did produce an option?

A. Yes.

Q. Signed?

A. Um-hum.

Dep.
Sept. 5, 1968
page 11

Q. Do you have the original of that option in your file?
A. No; I have a copy.
Q. All right.
A. The original was submitted to the Post Office.
Q. I ask you if this is also an executed copy of that option, similar to the one you have in your file?
A. Mine is a little clearer, but it seems to be the same thing.
Q. No differences?
A. No.

Mr. Lillard: Could we have that identified and put in the record?
Mr. Spence: I am putting that in there as Plaintiff's Exhibit No. 1, please.

(The document referred to was marked Plaintiff's Exhibit No. 1 for identification, and received in evidence.)

By Mr. Spence:
Q. O. K. Now, what discussion, if any, was had between yourself and Mr. Poe with regard to a contract?

Dep.
Sept. 5, 1968
page 12

A. Here again knowing we purchased the other tract, I felt this would be a purchase option executed rather quickly.
Q. There would be no contract?
A. I thought they might exercise the option in it, right.
Q. Without a contract?
A. Um-hum.
Q. Do you recall whether or not you relayed those thoughts to Mr. Poe?
A. I am not sure; I think I told him this option would be submitted for Departmental approval. The next thing he'd hear would be from them and not me.
Q. Who in the office, the Department office, would contact him?
A. Well, of course, I funnel mine through the Washington Region, Mr. Matthews.
Q. Yes, sir.
A. I don't even know what the title is; maybe it's Land Acquisition Control. I am not sure.

John L. Flora

Q. But the individual is Mr. Matthews?

A. The one I submit mine to. In fact, my letter is here. I submitted to the Chief of the Real Estate Branch of the Washington Region.

Dep. Sept. 5, 1968 page 13

Q. Could we see that letter?

A. Um-hum. That first paragraph is the only thing you are interested in.

Q. You say you had conveyed this option agreement, which has previously been introduced as Plaintiff's Exhibit No. 1, to your superiors or the Chief of Real Estate Branch by letter dated March 31, 1967?

A. Um-hum.

Q. I understand you have been advised by your counsel not to leave copies made of the files. Would you please read the first paragraph of the letter then?

A. It's from John L. Flora, Real Estate Officer, to Chief, Real Estate Branch.

"The attached option covering 194,701 square feet adjoining the recently-acquired property (the Hooper tract) and fronted on Prosperity Lane, a distance of 800 plus or minus feet, is recommended to purchase. The price of $243,375.25 reflects a square foot cost of $1.25. This price is supported by prior comparables developed for the Hooper tract purchase, and the appraisal made for the Hooper site."

Dep. Sept. 5, 1968 page 14

Mr. Lillard: May I ask that the record show that the objection to submission of the exhibit from that file or the copying of the exhibit from that file did not come from counsel for the defendant. I assume you refer to counsel for the Post Office Department.

The Witness: Yes, sir.

Mr. Lillard: All right. I personally would like to see the copy in the record.

By Mr. Spence:

Q. Now, what steps did you take personally after the submission of that letter then?

A. Nothing.

Q. Was that the last you heard of it at that particular time?

A. Um-hum.

Q. You had no further connection with this transaction subsequent to that time?

A. No.

Q. Do you know who in the Post Office handled it subsequent to that time?

A. Well, as I say, my submission went to the Chief, Real Estate Branch. Mr. Matthews, being assistant, took care of it from then on.

Dep. Sept. 5, 1968 page 15 }

Q. Who was the Chief of the Branch? Would that be Mr. Finnegan?

A. No. Mr. Ronald Reagan is the chief now, but at that time I think it was—well, let Mr. Matthews tell us.

Q. But regardless, you had no further personal contact with it subsequent to that time?

A. No.

Q. Did there come a time you learned that the property had been purchased by the Post Office Department?

Mr. Lillard: I object to answer to this. He has testified that he had no further personal contact with the matter. It seems to me, therefore, any answer such as this would be hearsay.

Mr. Spence: O. K.

The Witness: Correct.

By Mr. Spence:

Q. Did there come a time?

A. Somewhere down the line I was made aware this site had been purchased, but when and how, I can't recall.

Q. You had nothing further to do with the negotiations of the contract, if there was a contract? You have no knowledge there was a contract?

A. No.

Dep. Sept. 5, 1968 page 16 }

Q. You had no further contact with Mr. Poe after the time of this option was submitted then?

A. No.

Q. Now, at the time you entered into this option agreement with—at least it was executed and delivered to you by Mr. Poe—did you discuss with him the price or at any time prior to this?

A. The price is mentioned in the option.

Q. Did you discuss that with him at his office or—

John L. Flora

A. (Interposing) There again I am not certain whether we discussed the price before he got the option, or when he got the option and brought it back to me and it was entered at the top of the option.

Q. Let's see; option is typewritten, is that correct?

A. Um-hum.

Q. Do you carry a typewriter with you?

A. No.

Q. Would that have been done in his office, do you think?

A. I seem to think it was.

Q. Is that your recollection?

A. Um-hum, and not in my presence, possibly, because here again I am trying to recall. I think I left the option with him.

Dep.
Sept. 5, 1968
page 17 }

Q. The blank option?

A. Not filled out, and either returned later that day or the next day, and he had had it executed.

Q. Do you know where he delivered that to you?

A. I think I picked it up from him at his office.

Q. From him? Do you think perhaps he might have delivered this to you at the Stratford Motor Lodge at that time?

A. It is possible.

Q. Did you stay there during this period of time?

A. I stay there most of the time when I make my trips up here.

Q. Do you have any knowledge as to why the Post Office Department did not take up the option?

A. No.

Q. Did you ever have occasion to talk or negotiate with any other agent other than Mr. Poe?

A. You mean on other tracts?

Q. No. On this particular tract.

A. No.

Q. None at all, to your knowledge?

A. No.

Dep.
Sept. 5, 1968
page 18 }

Mr. Spence: I don't believe I have anything further.

Mr. Lillard: I have no questions.

Mr. Spence: I have a couple more questions.

John L. Flora

By Mr. Spence:

Q. In your letter of March 31st, I think to your superior in the Post Office Department, I believe you mentioned in there that you recommended this price—recommended the property?

A. Um-hum.

Q. What did you mean by that phrase in there?

A. Recommended the purchase?

Q. I think that was it.

A. Um-hum.

Q. The terminology in the letter—is that what you actually meant—recommended the purchase?

A. Normally when we secure an option, we recommend for exercise or make a statement it shouldn't be exercised. In this case, I recommended we should exercise the option.

Q. You felt the price was in line with other comparable tracts and was an acceptable price?

A. Um-hum.

Dep. Sept. 5, 1968 page 19

Q. Were you aware there would be a commission paid to Mr. Poe?

A. No.

Q. You didn't discuss that at all?

A. No.

Q. It wouldn't come as a surprise that—

A. (Interposing) It's normal real estate practice, isn't it?

Q. Yes, sir.

What is the policy of the Post Office Department, if any, with regard to agents?

A. I think our rule generally was this: We can get property without the use of an agent if at all possible, and we are never to use an agent to supplement our work. We don't go into a town and contact a real estate agent and say, "We are looking for a tract so big around this area; will you help us find it?" We only go to an agent if he has control of the property or the sale of it.

Q. And, you deal with an agent on those cases?

A. Yes.

Q. O. K.

Mr. Lillard: I now would like to ask a question.

Milner C. Matthews

EXAMINATION BY COUNSEL FOR THE DEFENDANT

By Mr. Lillard:

Dep. Sept. 5, 1968 page 20 }

Q. Isn't it true you frequently deal with the owner if you know the owner?

A. Quite often.

Q. Isn't it also true if you know the owner, you deal with him rather than someone else?

A. Sometimes the owner would rather we deal through his agent.

Q. But that is the only time you deal with an agent when you know the owner; is that not true?

A. Well, sometimes we deal with an agent. I said a moment ago, if the property is signed, the agent has it under his right to sell. We never use an agent to seek property for us, but if, as I say, there is a sign on the property such as this case, that is how I was led to the Virginia Land Company.

Q. The fact there was to be a commission paid, then, out of the purchase price would not have influenced your recommendation or not on the property?

A. No.

Mr. Spence: It was strictly whether or not the purchase price was a fair one in comparison with other similar properties?

The Witness: Yes.

Mr. Spence: O. K. That is all I have.

Mr. Lillard: I have nothing further.

* * * * *

Dep. Sept. 5, 1968 page 21 }

PROCEEDINGS

Whereupon, MILNER C. MATTHEWS, was called for examination by counsel for the plaintiff, and after having been first duly sworn, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR THE PLAINTIFF

By Mr. Sanders:

Q. Would you state your name and occupation, please?

Milner C. Matthews

A. Milner C. Matthews, Assistant Chief, Real Estate Branch, Post Office Department.

Q. What is your home address, Mr. Matthews?

A. 10111 Herford Place, Silver Spring.

Q. Do you have a home phone number?

A. 593-1382.

Q. What again is your exact position?

A. Assistant Chief, Real Estate Branch.

Q. How long have you been in that position?

A. For the past 2 years.

Q. And, your office is located in Washington, D. C.?

A. Yes, it is.

Dep. Sept. 5, 1968 page 22

Q. Has it been there during this period of time?

A. Yes. Not the same location; we moved.

Q. In Washington?

A. Yes.

Q. What are your particular duties in that position?

A. We handle all the real estate activities for the states of Virginia, Maryland, West Virginia, and Washington, D. C.

Q. Does that include the acquisition and placement of new Post Office facilities?

A. Yes, it does.

Q. Who is your immediate superior?

A. Well, right now he is the Chief of the place.

Q. Let's go back to during March of '67—possibly that period of time. What is the name of your superior at that time?

A. Richard M-e-h-a-f-f-e-y.

Q. While we are on names, I might as well clear up a couple of them. What was Mr. Paul Finnegan's position at that time?

A. He has recently changed positions.

Q. Was he in the Real Estate Section?

A. Yes. He is in the Real Estate Division in our headquarters office.

Dep. Sept. 5, 1968 page 23

Q. What was he?

A. With the Realty Review Branch, and Paul has since—I don't know if it was before or after March of '67, but he is now the Chief of that branch.

Q. Was he, in terms of Post Office set-up, above you at that time?

A. Yes.
Q. All right. And, what about Mr. Wilson?
A. Above me.
Q. What was his position at that time?
A. He was Assistant Director for Realty Management.
Q. Is he still in that position at this time?
A. Yes.

Mr. Lillard: What Wilson is that, Mr. Sanders; do you know the man?
The Witness: Richard.
Mr. Spence: No, it was James J. we were talking about.
The Witness: James J. is the Assistant.

By Mr. Sanders:
Q. Assistant General Manager?
A. Yes.
Q. Is he still in that position as far as you know?
A. Yes.

Dep. Sept. 5, 1968 page 24

Q. Mr. Matthews, in the course of your duties, did there come a time when you, with the Post Office Department, sought a place for a facility in Northern Virginia, a major facility?
A. Yes.
Q. What was the type of facility you were seeking?
A. It was a sectional center to handle all mail for Northern Virginia area, a satellite.
Q. Do you know when you first began to look for a site for this facility, or if you need your records to refresh your memory, please go ahead.
A. My records are not very complete in that respect because this being a Headquarters case, we do the leg work for them.
Q. Do you receive instructions, then, from above as to—
A. (Interposing) Yes.
Q. (Continuing)—what they want as far as where they want a new facility?
A. Yes. They tell us how much land they need, and the approximate area.
Q. You do not make the decisions as to placement of the facility and so forth as to the need?

Dep. Sept. 5, 1968 page 25

A. That is right.
Q. Can you approximate when you began—when you received instructions on this matter?

A. Well, the case was already in progress when I took over my present position. We were in the process of acquiring land for the facility; that is, several pieces of property in mind.

Q. When you took over your present position, had you acquired any property for this facility at that time?

A. No. We had several parcels in mind.

Q. How, do you, in the course of your job, do all or would all activities on this come through you?

A. Yes, it would have to pass over my desk.

Q. Did there come a time when a piece of property was purchased for this facility?

A. Yes.

Q. When was the first time a piece of property was purchased?

A. I believe the actual purchase date was early in 1967, a larger parcel we acquired.

Q. Let's go to it. There was a smaller parcel purchased first, was there not?

A. No. A larger parcel was purchased first.

Dep. Sept. 5, 1968 page 26

Q. Was this referred to as the Hooper piece?

A. Yes.

Q. When was that acquired?

A. Early in 1967.

Q. Well, was it before March of '67 that that was actually acquired?

A. Yes. I don't know when the settlement took place. I had nothing to do with that.

Q. The contract?

A. I think I did know the settlement in money was transacted.

Q. Was that portion known as the Hooper piece?

A. Um-hum.

Q. Acquired by contract?

A. Through a purchase of contract, yes.

Q. Through an actual contract?

A. Yes.

Q. Did you personally handle this transaction for the Post Office Department?

A. No, not the actual purchase.

Q. What?

A. I did all the—well, supervised all the market data and acquisition of the site plans and surveys.

Milner C. Matthews

Dep. Sept. 5, 1968 page 27

Q. All right. Did you ever, yourself, deal with anyone or negotiate with anyone over the Hooper portion?

A. No.

Q. All right. Now, did there come a time after that when a need for more land occurred?

A. I will back-track a little bit. You said did I negotiate. I merely determined the property was available and determined an asking price.

Q. How was that determined by you?

A. The guy told me how much he wanted for the property.

Q. Who did you deal with?

A. A Mr. Hooper.

Q. Was he known to you as the owner of the property?

A. Yes.

Q. To your knowledge, had there ever been an agent involved that you dealt with in that Hooper piece?

A. No, there wasn't.

Q. All right. Do you recall the purchase price of that piece?

A. I believe it was $860,000.

Q. What was the size of that parcel, sir?

A. Twenty-two acres.

Q. Now, let me ask you this. To this regard to that, was there ever an option acquired on that piece?

Dep. Sept. 5, 1968 page 28

A. No, I think we had a direct purchase agreement.

Q. Would your file reflect whether there was an option or not on that piece?

A. No, it doesn't.

Q. It does not, or it would not?

A. It does not.

Q. If there was one, it would be in the file?

A. It should be in the file.

Q. Is this the file for your office?

A. Yes.

Q. That you keep?

A. Yes.

Q. Did there come a time, then, a little bit later near 1967 when you determined that you needed more property at this location?

A. Yes. This determination was made at the Departmental outfit.

Q. Do you recall when that decision was conveyed to you, or you were directed to secure more property?

A. Yes. It was in March, I believe, of 1967, and it was transacted by telephone, I believe. I got a call from the Department saying they needed more property to accommodate the facility, and, as a matter of fact, it did pinpoint a certain piece of property that they would require.

Dep. Sept. 5, 1968 page 29

Q. What was that piece that was pinpointed?

A. It was on the corner of Prosperity and Lee Highway and comprised of 4½ acres.

Q. Adjacent to the Hooper piece?

A. Yes.

Q. Behind the Texaco station site?

A. Yes.

Q. When you first received these directions, what is the first thing you did?

A. Well, I called Mr. Flora on the phone and asked him could he possibly get up to Washington to work the case and he said he could. So, he came up, and I don't know the exact date.

Q. This during the month of March, to your knowledge?

A. Yes.

Q. All right. Now, did you at that time have any personal knowledge concerning the ownership of that adjacent piece or its status?

A. No.

Q. And then was Mr. Flora placed in charge of seeking acquisition of that piece?

A. Yes. I gave Mr. Flora a survey of the property we had in mind and asked him to contact the proper people.

Dep. Sept. 5, 1968 page 30

Mr. Lillard: I'm sorry; I didn't understand.

The Witness: I asked him to contact the proper people to see if we could acquire control.

By Mr. Sanders:

Q. You said you had a survey. Where was that from?

A. It was a survey of a larger parcel we had control of already. The survey encompassed the whole corner area; the Texaco part is there. Now the Texaco station is there.

Milner C. Matthews

Q. Do you have a letter from Mr. Flora in your file pertaining to this?

A. It was transacted by telephone.

Q. But you did send him a survey?

A. Well, he came to Washington and I handed it to him.

Q. You did not mail it?

A. No.

Q. All right.

A. To the best of my knowledge I didn't.

Q. Would the letter be in your file if you did?

A. I could have talked to him on the phone and put a buck slip on it and mailed it; I don't know.

Dep.
Sept. 5, 1968
page 31

Q. You say you advised him to contact the proper people?

A. Yes.

Q. Could you clarify that?

A. The proper people would be the owners of the property or any other method of getting to the owners.

Q. Now, at that time, in other words, you were not aware whether or not there was an agent who had a listing on the property?

A. No.

Q. If at that time you had known there was an agent on the listing, would it have made any difference in your directions to Mr. Flora?

A. No.

Q. What was the next thing that occurred, then, in your memory in relation to this piece of property?

A. Mr. Flora obtained an option to purchase the property, which was sent in to me, I believe the latter part of March.

Q. Excuse me. I am going to interrupt you, but between the time you sent the survey or Mr. Flora picked it up, and, I assume, discussed the entire situation with him, and the time you saw the option, did you have any further conversation

Dep.
Sept. 5, 1968
page 32

with Mr. Flora or anyone else concerning the purchase of this piece of property?

A. No.

Q. Or any letters?

A. No.

Q. So, from the time Mr. Flora left your office with the survey until you received an option, you had no connection with him?

A. That is right.

Q. All right. Now, do you recall when you received an option, this option we referred to?

A. Like I said, it was the latter part of March to the best of my knowledge.

Q. Was it received in the mail from Mr. Flora, or was there a meeting?

A. No, he came to my office and dictated a letter to my secretary to me, as I recall it, transmitting the option.

Q. Do you have that letter with you?

A. No.

Q. Where is that?

A. Probably in our master file in the Department.

Q. Do you recall the contents of that letter?

A. As I recall it, it merely re-stated the option that was attached thereto on the property. It gave the square foot value of the property, the asking price, and the total option price of it.

Dep. Sept. 5, 1968 page 33 }

Q. Did you make a recommendation as to purchase or not?

A. No, he wasn't asked to make a recommendation.

Q. Now, I will show you Plaintiff's Exhibit No. 1 and ask if you could identify that?

(Handing to the witness.)

A. I have my dates mixed up. I believe this is the option.

Mr. Lillard: May I ask that the witness be shown a more readable copy that would include all of the blanks that were filled in?

The Witness: I read about 20 of these a day.

By Mr. Sanders:

Q. Can you read the date written in at it on the line In Witness Whereof? What date is there?

A. March 30, 1967.

Q. All right.

A. Yes, this is the option Mr. Flora transmitted to me.

Q. All right, sir. Now, what did you do then upon receiving this—the original of this?

Dep. Sept. 5, 1968 page 34 }

A. I referred it to our Headquarters office.

Q. All right. Excuse me. Before you—

A. (Interposing) Again, I have no letter of

Milner C. Matthews

transmittal in my file. I either walked it over there or sent it over by Special Messenger.

Q. When Mr. Flora came to your office with this option, did you and Mr. Flora have any discussions concerning the purchase price?

A. Well, yes.

Q. Did you have any discussions concerning the presence or absence of an agent in this transaction?

A. No.

Q. What was your part in the discussion with regard to the purchase price?

A. Well, we discussed the feasibility of a purchase price, whether it was justified or not, and the current market would support the price.

Q. Is it a part of your duties to recommend on above the fairness or acceptability of a purchase price for a piece?

A. Yes.

Q. Do you recall in this transaction what your recommendations were in regard to this option?

Dep. Sept. 5, 1968 page 35

A. Well, as I say, there was no specific recommendation on this option, the reason being we had already obtained control of a larger tract and we had extensive market data research done on that piece of property, and since it was adjacent to the other property, we considered the previous market data was sufficient to support the prices.

Q. Let me ask you this, then. You forwarded the option to whom?

A. Well, it would go to the Realty Division of the Post Office Department.

Q. Any specific person?

A. Well, I know that process of how they process these papers when it gets there. It would go to the Director of the Division, and his name at that time was Dennis Jensen.

Mr. Lillard: I'm sorry. I'm having a little trouble hearing. Could you speak up a little more distinctly, please?

By Mr. Sanders:

Q. Now, when you sent the option on, you sent a letter with it which you do not have with you; is that correct?

A. I don't recall whether I dictated a letter or hand-carried the option over, or sent it over by Special Messenger.

Dep. Sept. 5, 1968 page 36

Q. And, you say no specific recommendation was made?

A. That is right. As I recall, there was a 30-day option calling for expedient action.

Q. All right. Well then, in your opinion, at the time and after discussing it with Mr. Flora and observing all the pertinent data, would it have been, had you been asked to make a specific recommendation, that this was a fair price and the Post Office Department should pay for a piece of property, or not?

A. Well, not being asked to make a recommendation, I don't think I can answer that question.

Q. You sent it on with no comment?

A. True.

Q. In either way. Now, if it had been for double the price, would it have been, in the course of your duties in that type of situation, shall we say, to can the deal?

A. I certainly would have brought it to the proper people's attention.

Q. That the price was out of proportion to the value of the property? What next occurred? What next did you have to do with the transaction after you sent the option on?

A. The next thing I received was that the negotiations were being carried on by the Departmental personnel.

Dep. Sept. 5, 1968 page 37

Q. Mr. Matthews, before we move on from that point on it, do you recall talking with, in the end of March, anyone else other than Mr. Flora concerning the purchase of this property? Anyone else outside the Post Office Department?

A. Yes. A Mr. Poe called me several times.

Q. All right. Who called who first—do you recall?

A. Mr. Poe called me.

Q. Do you have a record of that?

A. No, I don't have a record of his telephone call. He was anxious to know whether we were considering purchasing the site seriously or, he wanted to know the status of the option, too.

Q. This was after the option was executed?

A. Yes.

Q. Do you recall talking to Mr. Poe and calling him prior to the execution of the option?

A. I may have returned a call; if Mr. Poe had called me,

I would probably tell him I would try to ascertain the present status of it and call him back. This may have happened.

Q. Now, did you have any further discussion with Mr. Poe prior to the execution of the option?

A. Prior?

Dep. Sept. 5, 1968 page 38

Q. Prior to the execution of this option. In other words, prior to March 30, did you have any—you described one discussion where Mr. Poe asked you about the status and you stated he called you many times and you returned his calls.

Mr. Lillard: Were these prior? I want to be clear. I'm having trouble hearing. Did you mean he called you prior to March 30, the day on which the option was signed?

The Witness: No. He called me after the option was signed —wanted to know the status of the project and what our intentions were, and, of course, since I was not the contracting officer to this particular project, I had to make phone calls to see about determining the information for him.

By Mr. Sanders:

Q. Are you stating definitely that you did not talk to Mr. Poe on the telephone or call him prior to March 30 of last year?

A. Yes, I did not; to the best of my knowledge, I didn't. I made no record of any phone call I had from Mr. Poe.

Q. You made no record of them?

A. No, but I do recall talking to him. It may have been, if it was prior to the option, I see no reason why I should talk to him prior to the option.

Dep. Sept. 5, 1968 page 39

Q. When you called Mr. Poe, would you identify yourself to the answering party?

A. Well, yes.

Q. And, now, if I understand you right, there were many phone calls, but you're saying they all occurred after you got the option?

A. I believe so.

Q. All right, sir. Now, the phone call you returned where he asked you the price of the option was one telephone call?

A. I think all of my conversations with Mr. Poe was relating to the status of the option.

Q. All right. Who, to you, was Mr. Poe?

A. He, at that time, identified himself as representing the owner of the property.

Q. All right, sir. Now, then, I take it, Mr. Matthews, that you understood this Mr. Poe was an agent and not the owner of the property?

A. I understood he was representing the owner, whether he was an agent or not.

Dep. Sept. 5, 1968 page 40

Q. All right. And, did you seek to inquire whether he was an agent or whether there was any agent on the property?

A. No, I didn't.

Q. And, I take it that made no difference to you or the Post Office Department?

A. No, not at all.

Q. All right, sir. And, looking at the purchase price, the facts of whether or not a commission was included in it was not considered by you at that time; is that true?

A. That is true.

Q. Then, after the 30th, you say there were various phone calls from Mr. Poe to you and returning calls from you to Mr. Poe?

A. Yes.

Q. And, I take it you were missing each other?

A. I think at one point I did refer Mr. Poe to Mr. Finnegan.

Q. Do you recall at what point this would have been?

A. No, I don't.

Q. What purpose did you refer him to Mr. Finnegan?

A. Because I wasn't in a position to determine the current status of the project at my level, and since the whole project was being handled at the Departmental level, I thought Mr. Poe could get his information first-hand rather than going to me first.

Dep. Sept. 5, 1968 page 41

Q. All right. What further conversation, then, did you have with Mr. Poe concerning this piece?

A. I think I have told you just about all the conversations I had with him—just concerned the status.

Q. Was there any discussion between you and Mr. Poe at any time concerning the price for the property?

A. No.

Q. Or the terms of sale, or possible sale?

A. No.

Milner C. Matthews

Q. All right. Now, before we leave those phone calls, I want to pin this down as much as we can. Mr. Poe's records reflect a phone call from you on March 29th. That is prior to March 30th. Is your answer—and I asked you before—that you are denying there was ever any phone calls prior to March 30?

A. No indeed. I wouldn't deny it.

Q. It is possible there were phone calls, but you do not recall them?

A. That is true.

Q. All right. Now, would you continue from there for us? After March 30, you had certain phone calls from Mr. Poe and referred him to Mr. Finnegan at one point. Did you, in this referral, state he was from then on to talk to Mr. Finnegan and not you?

Dep. Sept. 5, 1968 page 42

A. Well, he may have called me again; I don't recall.

Q. And, what was your next connection with the case during this option period?

A. Well, actually the case was—I had no more dealings in the case. The actual purchase of the property was negotiated by Departmental personnel. I did receive copies from time to time showing properties on the case.

Q. All right. Is this contained in your file, progress reports in this case?

A. Yes. Well, my file contains just copies of inter-office correspondence relating to the proposed purchase.

Q. All right, sir. Is that what you are looking at there?

A. Yes.

Q. Could I look at it for a moment, please?

A. No, I'm sorry you can't.

Q. Under what basis?

A. On the basis our Regional Counsel asked me not to turn over any of these files to anyone.

Q. I am asking you to allow me to look at it.

Dep. Sept. 5, 1968 page 43

A. I am sorry.

Q. I wouldn't debate the law. Who is the counsel you talked to?

A. Mr. Leo Green, our Regional Counsel.

Q. Can I ask you to read it into the record as Mr. Flora did, or would you—this is your file. Would you state the dates of reports you received on this piece?

A. Well, the first one I received is dated May 29th, 1967, and it's an interoffice correspondence from Mr. Wilson to Mr.

Keels, and it relates to the possibility of purchasing additional land to accommodate the Northern Virginia facility.

Q. Does it mention the option previously being secured?

A. No, it mentions a purchase agreement.

Q. What does it state with reference to the purchase agreement?

A. It states prices set or proposed.

Q. Would you please state the prices that are listed there, sir?

A. Well, we all know the purchase price of the land, I am sure.

Q. Well, my question is, what does that letter state as to purchase prices, and what does it state with regard to purchase agreement.

Dep. Sept. 5, 1968 page 44

A. I'm sorry; I don't think I should give information out of this file directly without benefit of counsel.

Q. Are you taking the Fifth Amendment?

A. Not exactly, but I was—

Q. (Interposing) Are these privileged files?

A. Yes, they are.

Q. Are they classified Government files?

A. Well, we can consider them classified at any time. I don't know what the information can do for you.

Q. Is it your position, Mr. Matthews, as representing the Post Office Department here today, you do not wish to reveal any inter-Post Office discussions with regard to price of this property?

A. It is not that I don't want to reveal any information regarding a price of the property; it's because I was told not to.

Q. All right.

A. This was during the negotiations; this all relates to negotiations for the property.

Q. Who are you referring to when you say Departmental personnel handled the negotiations?

A. Well, I mentioned a memorandum from Mr. Wilson to Mr. Keels.

Dep. Sept. 5, 1968 page 45

Q. Where is he presently?

A. He is the Chief of the Property Management Section in Realty Division of the Post Office Department.

Q. Who else?

A. I have a copy of a memorandum to the Postal Data

Center asking them to prepare a check June 1, 1967, and this is signed by Mr. Dennis J. Jensen.

Q. In what amount, sir?

A. I am sorry; I think this is not asking for preparation of a check—well, it is a check for $10,000.

Q. And, was that the deposit the Post Office Department put on the piece of property we are concerned with?

A. Yes. And, this same letter sets up an obligation for a larger amount of money.

Q. All right. Mr. Matthews, let's go back where we were before we got in this thing with the file, there. We were up to May 29th when you received some Departmental reports. What did you do, if anything, as a result of these reports you received?

A. Nothing.

Q. All right. Were you ever directed to do anything further?

A. No.

Dep. Sept. 5, 1968 page 46

Q. You hesitated somewhat.

A. Well, I was trying to recall.

Q. All right, sir. Did you?

A. Usually following a transaction such as this maybe a request will come to the region to obtain title policies and surveys and things of that sort, but I believe that was all handled at that Departmental level in this particular case.

Q. On this point—and you can correct me if I am wrong—your duty in connection with this case was, you assigned Mr. Flora to it and had some conversations with Mr. Poe and referred him to Mr. Finnegan, and received an option which you passed on with no comments above you. And, is that the end of your connection with the case?

A. Yes, it is.

Q. And, all these other papers that I see in that file all occurred prior to your passing this option on or prior to May 29th?

A. Well, this file encompasses the entire project.

Q. In the course of your duties, are you notified of the disposition of these transactions—the finalization of them?

A. Yes. I was notified the property had been purchased.

Dep. Sept. 5, 1968 page 47

Q. When were you so notified?

A. I received a copy of a memorandum dated

July 14th 1967 from the Acting Chief of the Property Control Branch.

Q. Who was that?

A. Mr. Thomas F. Fox, to the General Counsel, Mr. James J. Wilson, transmitting 2 copies of the agreement of sale.

Q. What is the date?

A. Between Mr. E. Kemper Beard and the Acting Assistant Postmaster General.

Q. Did you ever see this agreement of sale?

A. No, sir, I haven't.

Q. To this day, you have never seen an agreement of sale itself?

A. No.

Q. All right.

A. Unless that is the document you had when you were in my office the other day.

Q. At this time, other than recently. Were you advised or were you consulted with regard to the final purchase price which was arrived at?

A. No.

Dep. Sept. 5, 1968 page 48 }

Q. Did you ever know that—what the final purchase price was or learn of it?

A. Only through copies of correspondence. It appears we put down $10,000 which you call earnest money, and the remainder of $215,000 was paid at settlement, I imagine.

Q. Now, am I correct then that after you forwarded the option on that Mr. Keels conducted the negotiations from that point, according to your record?

A. No, I believe Mr. Finnegan actually conducted the negotiations.

Q. All right. Now, after this time of May 29th, did you ever receive a telephone message from Mr. Poe, to your knowledge?

A. After May 29th?

Q. Yes, sir.

A. I believe I did.

Q. Do you recall when it was or the substance of what it was about?

A. Well, I recall what it was about, but I don't recall the time.

Q. What was it about?

A. It was—Mr. Poe indicated to me that he did not receive his commission for the sale of the property.

Milner C. Matthews

Dep. Sept. 5, 1968 page 49

Q. What was your response to that?

A. Well, my reaction to that was to take a look at his contract with the owner.

Q. But is it or is it not established Post Office policy or is a Post Office policy with regard to commissions of an agent on property that you all purchase or recommend for purchase?

A. We do not pay agents fees, if that is what you're getting at.

Q. What I'm getting at is, would the fact that a commission was included and paid by the seller, put it that way, that a commission is being paid by the seller, and an agent is the person negotiating the contract, have any bearing on the Post Office Department's acceptance of a piece of property?

A. Well, I believe in a purchase contract with the Government, I believe there is a clause that states that the owner warrants no commission included in the purchase price. Of course, that is strictly a contractural agreement between the owner and the agent, and he is really warranteeing the commissions, not a part of the purchase price.

Dep. Sept. 5, 1968 page 50

Q. Does your record reflect, or do you have any knowledge of the Post Office Department desiring to lower the price because a commission was included in the original price? Now desiring to seek a lower price because of the commission being included in the original price?

A. No.

Q. You say that was not the case, or to your knowledge that you know that I am asking you, did you know that wasn't done, or you have no knowledge if it was done?

A. I certainly have no knowledge of it, if it was done.

Q. Is that, to your knowledge, a normal course of procedure for the Post Office where an agent is involved?

Mr. Lillard: I am sorry. I don't understand this question.

The Witness: Thank you. I don't believe I do, either.

Mr. Sanders: Strike that question.

By Mr. Sanders:

Q. Where an agent is involved in a transaction and a purchase price is stated for the property, does the Post Office Department seek to determine whether or not an agent's commission is included in the price? Do you personally?

A. No, I do not.

Q. All right. To your knowledge, did any source other than Mr. Poe either introduce the Post Office Department to this property or negotiate on behalf of the owners?

Dep. Sept. 5, 1968 page 51 }

A. I can't answer that.

Q. Other than—

A. (Interposing) I know that in just driving by the property I noticed a sign on the property. It was for sale, and I believe it had the name of Virginia Land Company, and if I were looking for to acquire control of that property, I would certainly go to the telephone number that was on that sign.

Q. My question was, to your knowledge did anyone else have anything else to do with introducing the property to the Post Office?

A. No.

Q. All right. Did you yourself ever see a demand letter from attorneys from Mr. Poe stating that a commission was due him?

A. Not to my knowledge.

Q. No letter of this type was referred to you for examination?

A. Not to my knowledge.

Mr. Sanders: All right. I think that is all I have.

How about you? Do you want to ask him something?

Mr. Lillard: I do want to ask some questions if you are finished.

Dep. Sept. 5, 1968 page 52 }

EXAMINATION BY COUNSEL FOR THE DEFENDANTS

By Mr. Lillard:

Q. All right, Mr. Matthews. Did you participate in the purchase of the Hooper tract, I believe you stated?

A. Yes.

Q. Now, following the purchase of the Hooper tract, you stated you were notified by your superiors in the Post Office Department that they had decided they wanted to acquire this 4½ acre tract of land; is that correct?

A. That is correct.

Q. And, you then called Mr. Flora and asked him to assist

you in securing information and perhaps a contract for the purpose of this 4½ acres?

A. Yes, sir.

Q. Then your knowledge of and your interest in the 4½ acres originated with a memo from your superior in the Post Office Department; is that not correct?

A. I think I said it was a telephone call.

Q. All right, a message, let us say, from your superiors in the Post Office Department. At that time, had you had any contact with Mr. Poe?

Dep. Sept. 5, 1968 page 53

A. No, sir.

Q. Did you know who he was?

A. No, sir.

Q. When did you first find out who he was?

A. Well, when he called me relative to the status of the project.

Q. Was this after the execution of the option?

A. To the best of my knowledge, yes.

Q. You refer to the option as being dated May 1, 1967; that is not correct, is it?

A. I think it was May 30.

Q. Isn't it dated March 30? Please take a look at it and tell me; isn't it dated March 30?

(Handing to the witness.)

A. It is dated up here (indicating) May 1 and down here (indicating) May 30.

Q. Read it. What does it say with reference to the date of May 1, 1967? Isn't that the expiration date?

A. Yes, sir, that is right.

Q. So it's not dated May 1, 1967, is it?

A. That is true.

Q. It expires on May 1, 1967. Between March 30 and May 1, 1967, does your file reflect any action which could be construed as an exercise of that option?

Dep. Sept. 5, 1968 page 54

A. No, sir.

Q. Does your file contain any communication relative to the option from your superiors in the Post Office Department between March 30, 1967, and May 1, 1967?

A. No, sir.

Q. Now, in the normal course of your business, if this option had been exercised, would you have known it?

A. Yes; I would have been furnished a copy of the document exercising the option, I am sure.

Q. If this option had been extended, you would have known that, would you not?

A. I would have been furnished a copy of that, also.

Q. So that as of May 1, 1967, you had heard nothing from the Post Office Department relative to this option?

A. That is right.

Q. Indicating it had either been exercised or extended?

A. I didn't receive any information that it had been exercised or extended. That is correct.

Q. Would it not be your understanding, then, on May 2, 1967, this was a dead issue—the option had expired?

A. That is true.

Dep. Sept. 5, 1968 page 55 } Q. Now, after May 1, 1967, did you receive any message or direction from your superiors in the Post Office Department asking you to contact Mr. Poe in any way, relative to the purchase of this property?

A. Not to the best of my knowledge.

Q. Well, look through your file and see.

A. I have, and it's not in my file.

Q. No memorandum of any such message?

A. No.

Q. After May 1 or May 2 of 1967 you had no contacts with Mr. Poe in any context wherein you were seeking to buy this property?

A. I don't know when the telephone calls took place, whether it was between the time of May 1 and, well, before the option expired or not, or after.

Q. Well, if he inquired after May 1, 1967, of the status of this option, would you not have told him the option had expired?

A. Not necessarily. It could have been extended and I didn't receive a copy. I don't know.

Q. But, normally you would have received a copy, had it been extended, wouldn't you?

A. Yes, normally I would.

Dep. Sept. 5, 1968 page 56 } Q. Following May 1, 1967, what is the date of the first entry in your file relative to the purchase of this property?

A. May 29, 1967.

Q. Is there any entry between March 30, 1967, and May 29, 1967?

Milner C. Matthews

A. No.

Q. Do I understand you correctly then? Your file reflects no communication to you relative to this property between March 30, 1967, and May 29, 1967?

A. May 29 was the first piece of correspondence I have in here relating to that.

Q. Now, do you have any correspondence there which you received from Mr. Poe or from the Virginia Land Company?

A. No, sir, I don't.

Q. Every item in that file, then, is either an item of correspondence or a record of a message from you to other members in your Department or from other members in your Department to you; is that correct?

A. No, this file relates to all the transactions that I have handled in connection with the project. It relates to surveys, to, maybe, offers from other parties on property that they might have available, and leases on the property we own.

Dep. Sept. 5, 1968 page 57

Q. All right. Let me ask another question, then. Following March 30, 1967, does that file contain a communication to you from Mr. Thomas L. Poe or the Virginia Land Company, or a communication from you to Mr. Poe or the Virginia Land Company?

A. No, I have no correspondence in the file with Mr. Poe at all.

Q. Do you have any correspondence with Mr. Kemper Beard?

A. Not direct from me or any recent copies of correspondence to Mr. Beard from the Department.

Q. Would you tell me the date of the earliest of those entries if you find such entries?

A. As a matter of fact, there isn't any copies of memorandums to Mr. Beard at all. These are all interoffice memorandums.

Q. Um-hum.

A. And they wouldn't necessarily be in my file anyway. They would be in the master file.

Q. I believe in your testimony the price paid for the property was $225,000.

A. That is what is indicated by my file.

Dep. Sept. 5, 1968

Q. What is the price mentioned in the option, Plaintiff's Exhibit No. 1?

A. $243,376.25.

page 58 } Q. Do you know that a formal contract of sale was executed for the purchase of this property?

A. My file indicates there was a formal contract executed.

Q. Does your file indicate the date of it?

A. No.

Q. Does your file indicate the date on which you first learned about it?

A. Well, I was advised by counsel not to divulge any dates.

Q. If you want to rely on that and decline to answer, I won't press you.

A. Well, I'd like to do that, if you don't mind.

Mr. Lillard: In that connection, however, I do not wish that remark to be construed as an agreement on my part; that you have the right to withhold access to those documents with or without advice of counsel. I believe that is all I have.

FURTHER EXAMINATION BY
COUNSEL FOR THE PLAINTIFF

By Mr. Sanders:

Dep. Sept. 5, 1968 page 59 } Q. Mr. Matthews, the date that you have already mentioned was May 29th being the next time you had any connection with the case after the date of the option, which is March 30. Do you know whether or not another option was executed for this piece of property?

A. No, I don't.

Q. You do not know that, or there was not?

A. I do not know there was; if there was, I am not aware of it.

Q. Normally, if this option was not picked up, is it just—nothing done—just filed away and no affirmative action taken? Is that the way the option is not picked up?

A. I don't know. I submitted the option, of course, to our Headquarters for any action they deemed appropriate. Whether or not I did bring it to their attention, I am sure that the option had to be taken within 30 days or within the time that the option expired.

Q. All right. Do you know why it was May 29th before you heard anything more about this piece of property?

A. No, I don't.

Q. That date is of no significance as far as you are concerned?

A. No.

Q. As far as you know, was there any June 1 deadline coming up on anything having to do with this transaction?

Dep.
Sept. 5, 1968
page 60

A. A June 1 deadline?

Q. Yes.

A. Not so far as I know.

Q. All right. Now, again I'm asking you, and not from your file, what you know from whatever source you know, and if it's in your mind, from whatever source, do you know how the purchase price of $225,000 was arrived at?

A. No.

Q. You have absolutely no knowledge of how that was reduced from the original option price?

A. I can only assume.

Q. I wouldn't ask you to assume, subject to his objection.

Mr. Lillard: I want to object to his even stating an assumption, for the record. This is obviously the inadmissible, and I don't think the question is proper.

Mr. Sanders: We reserve exception, I believe is the procedure, is it not?

By Mr. Sanders:

Q. Could you go ahead and state, what is your assumption, then? You have had many dealings involving purchase of property with the Post Office Department, have you not?

A. Yes.

Dep.
Sept. 5, 1968
page 61

Q. Am I correct in stating the Post Office tries to get the best price it can?

A. Yes, indeed.

Q. So this piece, to your knowledge, was no different from any other in that regard?

A. That is right.

Q. You have no knowledge of any negotiations, discussions, or your advice was never sought as to lowering this price or negotiating a better price?

A. That is correct.

Q. You had nothing to do with that; is it correct Mr. Finnegan is the man that does this thing—negotiates after it passes out of your hands, this piece?

A. Well, not necessarily Mr. Finnegan. It could be any of my superiors at the Departmental level.

Q. Do you know who it was with this piece? I believe you stated Mr. Finnegan?

A. Yes.

Q. You referred Mr. Poe to Mr. Finnegan, did you not?

A. Right.

Q. Why did you refer him to Mr. Finnegan?

Dep. Sept. 5, 1968 page 62

A. I knew he would be the obvious one to negotiate this piece of property, although he could have delegated it to one of his subordinates.

Q. One of whom is you; is that correct?

A. No. He has several subordinates within his own branch.

Q. You mentioned Mr. Thomas Fox previously; what is his connection with this?

A. Mr. Fox is with the Property Control Branch of the Realty Division and his function is to handle the actual purchase of property—handle the papers.

Q. Does he sign any contracts?

A. No.

Q. He does not?

A. No. And he doesn't do any negotiating.

Q. Daniel Curtis—who is Mr. Curtis?

A. Mr. Kurtz?

Q. K-u-r-t-z.

A. He is with the General Counsel's office.

Q. He is an attorney?

A. Yes.

Q. Mr. Paul Finnegan is who you named before?

A. Yes.

Dep. Sept. 5, 1968 page 63

Q. You say Mr. Fox wouldn't have done negotiating either on this piece?

A. No.

Q. Do you ever see contracts in your position on pieces of property?

A. Yes.

Q. Don't you normally see the contract on pieces that are in your region and you handle?

A. We have two levels of authority. One is the regional level and the other is Departmental level. Up to a certain amount of money, the region will handle. Anything over that is Departmental.

Q. Regarding this piece, it's perfectly normal you didn't see the contract?

A. Yes.

Milner C. Matthews

Q. I take it it's one of these other levels?
A. Yes.
Q. I asked you earlier, and it was objected to, that the price differential you had assumptions or opinions as to why the price was reduced to $225,000. Would you state that, subject to Mr. Lillard's objection and exception?
A. I can only assume it was negotiated downward.

Mr. Lillard: Well, I will join in that assumption.

By Mr. Sanders:

Dep. Sept. 5, 1968 page 64

Q. You are assuming it was negotiated downwards, but you don't know and aren't sure who did that negotiation?
A. No. Again, I assume it was Mr. Finnegan.
Q. What is Mr. Finnegan's home address?
A. I have no idea.
Q. You have no idea what area he lives in?
A. I think he lives in Maryland.
Q. Can you narrow that down any?
A. The best I can recall, I think it's in the Germantown area.

Mr. Sanders: Well, Mr. Matthews, I think that is, unfortunately, all we have to ask you.

FURTHER EXAMINATION BY
COUNSEL FOR THE DEFENDANTS

By Mr. Lillard:
Q. Mr. Matthews, to your knowledge nobody in the Post Office Department with authority to deal at this level ever approved the price of $243,376 and a quarter, which is the option price?
A. I think it's safe to assume nobody ever approved the option price.
Q. You know, don't you, that the Post Office Department has the power of condemnation?
A. So?

Dep. Sept. 5, 1968 page 65

Q. So that if they are unwilling to pay the price the owner asks for a piece of property, they have the legal power to condemn the price.
A. That is true.

Q. They are never in a position when they have to pay the owner's price; is that not true—by contract, at least?

A. Well, they certainly are in the position to accept or reject.

Mr. Sanders: I would stipulate they can condemn a property if they desire.

By Mr. Lillard:

Q. About the negotiation downward of this price—is it not possible that the Department price was never this high? Is that not what you assume?

A. The Department, insofar as I know, never places a price on anything.

Mr. Sanders: I am going to interpose an objection on another assumption, same grounds stated by Mr. Lillard earlier.

By Mr. Lillard:

Q. You have no evidence that the Post Office Department was ever willing to pay $243,376 and a quarter, do you?

A. No.

Dep. Sept. 5, 1968 page 66

Q. In fact, your evidence was to the contrary—that the Department was never willing to pay that much; isn't that correct?

A. No, I have no evidence of that, either.

Q. Had they been willing to pay that price, don't you think they would have exercised this option?

Mr. Sanders: Object to that question, what he thinks.

Mr. Lillard: I'll withdraw the question.

I have no further questions.

FURTHER EXAMINATION BY COUNSEL FOR THE PLAINTIFF

By Mr. Sanders:

Q. I don't mean to batter you around, Mr. Matthews, but you stated earlier that you just sent this option on with no comment.

A. Yes.

Q. Is it not one of your jobs to recommend in some small way, or comment upon, property that comes through your hands?

A. Yes, it is.

Milner C. Matthews

Q. Then why in this particular case did you say nothing at all one way or the other?

A. Because I was asked to merely gain control of the property.

Dep. Sept. 5, 1968 page 67

Q. Now, if I could have the indulgence of everybody here, will the Reporter please read back the letter of March 31?

"The attached option covering 194,701 square feet adjoining the recently-acquired property (the Hooper tract) and fronted on Prosperity Lane, a distance of 800 plus or minus feet, is recommended to purchase. The price of $243,375.25 reflects a square foot cost of $1.25. This price is supported by prior comparables developed for the Hooper tract purchase, and the appraisal made for the Hooper site."

By Mr. Sanders:

Q. Mr. Matthews, you just had read to you a part of the testimony of Mr. Flora reading where he was reading a letter he sent—he stated he sent—to you on March 3rd. I believe earlier you testified you did refer a letter from Mr. Flora containing the price and, I believe, also you stated it did not contain a recommendation.

A. I did.

Q. Does that refresh your recollection?

A. Yes, it does.

Q. All right. And, does it refresh your recollection any more about anything you did about recommendations or non-recommendations on this?

Dep. Sept. 5, 1968 page 68

A. No, it doesn't.

Q. You sent Mr. Flora's letter on with your option?

A. Yes, I did.

Q. So, in fact, there was a recommendation sent with the option from Mr. Flora?

A. There was one from Mr. Flora, evidently.

Q. All right, sir. And, again, after that time you had no further dealings within the Post Office as to the price of this property until you received a memorandum 2 months later, May 29?

A. That is right.

Mr. Sanders: All right. That is all. Thank you.

* * * * *

Dep.
Nov. 19, 1968
page 1 }

* * * * *

Washington, D. C.
Tuesday 19 November 1968

Deposition of Paul V. Finegan, taken pursuant to notice by counsel for defendant, before Jesse L. Ward, Jr., Notary Public in and for the District of Columbia, in the office of deponent, Room 7502, United States Post Office Department Building, 12th Street and Pennsylvania Avenue, N. W., Washington, D. C., commencing at 10:00 o'clock, a. m., on Tuesday, the 19th day of November, A. D. 1968.

PRESENT:
On behalf of the plaintiff:
H. Kendrick Sanders, Esq.
On behalf of the defendant:
R. J. Lillard, Esq.

* * * * *

Dep.
Nov. 19, 1968
page 3 }

PROCEEDINGS

Thereupon, PAUL V. FINEGAN called as a witness for examination by counsel for defendant, and having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Lillard:

Q. Mr. Finegan, would you state your name, please, and your place of residence?

A. Paul V. Finegan, F-i-n-e-g-a-n, Route 1, Box 172-A, Gaithersburg, Maryland.

Q. Are you employed by the Post Office Department of the United States?

Paul V. Finegan

A. I am.

Q. What is your official title?

A. Chief, Realty Review Branch, Real Estate Division, Bureau of Facilities, Post Office Department.

Q. In that capacity are you connected with the purchase of real estate by the Post Office Department?

A. Yes, sir.

Dep. Nov. 19, 1968 page 4

Q. What area comes within your jurisdiction? What portion of the United States?

A. All of it.

Q. All of it?

A. Yes, sir.

Q. Now, were you aware at any time that the Post Office Department was purchasing a tract of land on Prosperity Avenue, in Fairfax County, Virginia?

A. Yes, sir.

Q. When did you first become aware that this was in progress?

A. Possibly May, 1967.

Q. At that point did the Post Office Department own any land on Prosperity Avenue in Fairfax County?

A. No, sir.

Yes, I'm sorry. Yes, they did.

Q. From whom had the land been purchased, if you know?

A. Hooper Bros.

Q. For what reason was that land acquired by the Post Office Department?

A. For a Northern Virginia Postal Facility.

Q. Was that facility then in existence, that is to say, in May of 1967?

Dep. Nov. 19, 1968 page 5

A. No, sir.

Q. Had plans for it been drawn?

A. I am going to answer that question "No."

Q. Were plans for it under consideration within the Department?

A. Yes, sir, they were.

Q. Did you at any time become aware that the Post Office Department would need additional land other than the tract acquired from Hooper Bros.?

A. Yes, sir.

Q. When did you become aware of that?

A. In answer to the last question, I said "in May." It was either the tail end of May or the first part of June, 1967.

Q. Now, can you state from your recollection or from your

records what communications you first received on the subject?

A. No, sir.

Q. Can you examine your records and ascertain when you received the first communication on the subject, and by "subject" I mean the acquisition of additional land on Prosperity Avenue in Fairfax County, Virginia?

A. It was about May 23, 1967.

Dep. Nov. 19, 1968 page 6 } Q. Do you know if anyone connected with the Post Office Department had undertaken, prior to that date, to negotiate for additional land at the Prosperity Avenue location in Fairfax County, Virginia?

(At this point, plaintiff Thomas L. Poe entered the deposition room and was introduced to those present.)

The Witness (Answering): Yes, they had.

By Mr. Lillard:

Q. Do you know if any attempt had been made to acquire the land, or to secure an option on it?

A. That is what I had reference to; an option was secured.

Q. May I ask you to look at this piece of paper and see if you are familiar with it (Passing document to witness)?

A. I cannot say that I have seen this before, the original of it. I believe I have. It is on our regular form.

Q. Look at that one, please (Passing document to witness).

A. I cannot answer, Mr. Lillard: I don't know. I have no reason to doubt it. I believe it could be a copy of one that was presented to Headquarters, Post Office, by the Washington Regional Office.

Dep. Nov. 19, 1968 page 7 } Q. Would you have in your file a copy of the one that was presented?

A. Yes, sir.

Q. Would you compare it with this and see if this is indeed a copy?

A. No, sir (Examining document).

Q. Would you state in what respect that differs from the copy which you have?

A. If some of you will look over my shoulder, I will show you.

In paragraph 3 in the copy, in the original that I have, there were words that were deleted, "and by delivery of final

policy of title insurance by the undersigned, said title insurance policy to be delivered at the sole cost and expense of the undersigned," that is not eliminated on this copy.

At the bottom, the address is here, and the telephone number are eliminated on the copy.

In other respects it appears to be identical.

Mr. Lillard: Let the record show that the paper which Mr. Finegan was comparing with a document in his file is a paper which was identified by the witnesses John L. Flora and Milner C. Matthews during a deposition taken at Falls Church, Virginia, on September 5, 1968, at which time the paper was identified as Plaintiff's Exhibit 1, and was initialed by counsel for the plaintiff and for the defendant.

Dep.
Nov. 19, 1968
page 8 }

I ask agreement of Mr. Sanders that a photo copy of this be attached to this deposition.

Mr. Sanders: Off the record a second.

(There was discussion off the record.)

Mr. Lillard: Do you agree with my request that a photo copy of this be attached to the deposition of Mr. Finegan?

Mr. Sanders: Of this as being a copy of the original—

Mr. Lillard: As being a copy of what we have identified as Plaintiff's Exhibit 1.

Mr. Sanders: O. K., sure.

(A document previously marked for identification as Plaintiff's Exhibit No. 1, and initialed by respective counsel, will be found attached to this deposition.)

By Mr. Lillard:

Q. Now, I invite your attention, Mr. Finegan, to the copy of this document which is in your file, and I ask you if that is an option to purchase land, and so designated?

A. It is an option to purchase land.

Q. When does the option expire?

A. May 1, 1967.

Dep.
Nov. 19, 1968
page 9 }

Q. What is the date of the document?

A. March 30, 1967.

Q. Prior to May 1, 1967, did this document come to your attention?

A. Yes, it did.

Q. Did you, in your duties as previously outlined, become obliged to form a judgment as to whether or not the Post Office Department should exercise this option?

A. Yes, sir.

Q. Did you form such a judgment?

A. Yes, sir.

Q. What was your judgment?

A. That we had no interest in the property, we were not interested in exercising an option, and we were not interested in the property at all.

Q. Did that frame of mind continue past the May 1, 1967, date?

A. It did.

Q. Subsequent to that, did you have reason to change your attitude toward the acquisition of this property?

A. Yes, sir, I did.

Q. What caused the change in your attitude?

A. Changed plans of the Post Office Department.

Dep. Nov. 19, 1968 page 10

Q. When you were advised of the changed plans, did you take steps to acquire the property which was the subject of this option?

A. I did.

Q. Would you state what you did in order to acquire the property?

A. I called the owners.

Q. And would you state who they were, according to your records?

A. E. Kemper Beard, a man by the name of Nagel, N-a-g-e-l, and I don't recall the other names, but there were eight in the ownership as I recall. My dealings were with E. Kemper Beard and Mr. Nagel.

Q. Did you confer with these two gentlemen, Mr. Beard and Mr. Nagel?

A. I did.

Q. Did you advise them of the interest of the Department in purchasing this property?

A. I did.

Q. Did you make any offer to them?

A. I did.

Q. What was your offer?

Dep. Nov. 19, 1968

A. $225,000 with certain reservations as to payments of charges.

Q. Did they accept this offer?

page 11 } A. Not immediately, but they did after one slight modification in the contract form.

Q. Was an agreement of sale executed pursuant to these negotiations to which you have just referred?

A. It was.

Q. May I ask you preliminarily, exhibiting the agreement of sale, what I believe to be a copy of it, to you, on what date you held the initial conference with Messrs. Kemper Beard and William Nagel?

A. I held it on June 8, 1967.

Q. Had you ever held a conference with these gentlemen before, with reference to the purchase of this property?

A. No, sir.

Mr. Lillard: Off the record.

(There was discussion off the record.)

By Mr. Lillard:

Q. I hand you this document, Mr. Finegan, and ask you if you can recognize it?

A. It is the same (After examining document).

Q. The same as what, Mr. Finegan?

A. The same as the original contract to purchase the property.

Dep.
Nov. 19, 1968
page 12 } Mr. Lillard: I would like to have this identified as Defendant's Exhibit 1, and ask that this be initialed by counsel of record.

(The document entitled "Agreement of Sale" was marked for identification as Defendant's Exhibit 1, and initialed by counsel of record.)

Mr. Lillard: I deliver this to Mr. Ward to attach to this deposition.

By Mr. Lillard:

Q. Now, following the execution of that contract which you have identified, and which has been marked as Defendant's Exhibit 1, did the Post Office Department of the United States proceed to purchase this property or to settle the contract so made?

A. I have no personal knowledge of that.

Paul V. Finegan

Q. Do you know whether or not the Post Office Department presently owns the piece of property which is the subject of this contract?

A. I do not personally know that.

Q. Following the 14th day of June, 1967, which is the date of this contract identified as Defendant's Exhibit 1, were you involved in any negotiations to amend or rescind this contract?

Dep. Nov. 19, 1968 page 13

A. No, sir.

Q. Had negotiations to amend or rescind this contract been undertaken by the Post Office Department, would that negotiation have been within your jurisdiction?

A. Yes, sir.

Q. I believe you stated that the first meeting you had with Messrs. Beard and Nagel was the 8th day of June, 1967. Do I remember that correctly?

A. It was.

Q. Now, between that date and the 14th day of June, 1967, did you negotiate in any way with Mr. Thomas L. Poe?

A. No, sir.

Q. Prior to the 8th day of June, 1967, had you negotiated in any way with Mr. Thomas L. Poe?

A. No, sir.

Q. Did you ever communicate in any way with Mr. Poe?

A. Mr. Poe called me, after a contract had been signed, and I refused to talk with him.

Q. Well, do you mean that you learned who was calling and did not speak to him at all?

A. I spoke with him, and I told him that the conversation —he was probing into a contract that we had made, and I told him in substance I was not talking with him, get his information someplace else. We had a conversation.

Dep. Nov. 19, 1968 page 14

Q. Could you tell me the date of that conversation or its approximate date?

A. It was after the contract had been signed, I'd say.

Q. Would it have been within the month following the date of signing the contract, the 14th day of June, 1967?

A. I will go back a moment, there. On June 8th I met with Beard and Nagel, at which time I proffered a contract and a check to them. They did not sign the instrument at that time and they returned to my office within possibly a week's time, at which time they did sign the contract and they took the

deposit check of $10,000 with them. I processed the contract and so far as I am concerned, that ended my activity in the matter. Others had to follow through in the purchase, it was not my responsibility.

Mr. Poe's conversation I did not record. I believe it to be —it was after the contract was fully executed.

Mr. Lillard: I have no further questions.

CROSS EXAMINATION

By Mr. Sanders:

Q. Mr. Finegan, I believe your testimony was that the actual decision to acquire the subject tract was in May, May 23rd to be exact, was your first communication on that?

Dep. Nov. 19, 1968 page 15

A. Actually June 6th is the day that that was firmed up.

Q. Let's go back somewhat.

What, if any, jurisdiction did you have over Mr. Flora, who was the field man for the Post Office at that time?

A. None.

Q. What, if any, did you have over Mr. Matthews at that time?

A. None.

Q. What was their position in relation to yours at that time?

A. Mr. Matthews was then in the position as Acting Chief of the Real Estate Branch of the Washington Region, I believe, and as such he was a superior of Mr. Flora. We have no supervisory authority as such from headquarters over the field real estate personnel. Their supervisors are in the Regions. Ours is a technical supervision at headquarters.

Q. Who at that time would have the final say over whether to acquire additional property at this Prosperity Road site?

A. Only headquarters.

Q. What does that mean?

A. That determination would only be made to purchase a piece of property by the Assistant Postmaster General or someone up in that area.

Dep. Nov. 19, 1968 page 16

Q. Was there an Assistant Postmaster General for acquisitions?

A. Not for acquisitions as such.

Q. Was it one man?

A. One man handles that position in the Bureau of Facilities. We have several Assistant Postmaster Generals.

Q. Do you know who it was then at that time who would have had the final authority directing you to acquire this property?

A. The final determination was made by the Deputy Assistant—Acting Assistant Postmaster General, Amos Coffman.

Q. I believe his name is signed to the contract at the bottom as Acting Assistant Postmaster General?

A. It is.

Q. Now, from your memory if you can, and if you cannot I ask you to refer to your records if you have to, did you not receive other communications concerning this subject property prior to May 23rd of 1967?

A. I don't understand the question.

Q. Did not Mr. Flora send to you the option with a covering letter or memo?

Dep. Nov. 19, 1968 page 17

A. Not to my knowledge. That would be irregular procedure.

Q. Well, could you look at the file and see if there was a covering letter of any sort when this option was secured?

A. He did not (Examining file).

Q. Do you have a letter from Mr. Matthews at approximately the same time?

A. Yes, sir, one that he has initialed.

Q. In relation to the first option or the option?

A. Yes, sir.

Q. What does that letter state with relation to the option? Just read it into the record if you would, Mr. Finegan.

The Witness: Is this proper?

Mr. Finn: It is.

The Witness: Because it is getting into our records.

Mr. Finn: It depends on whether or not your internal—

The Witness: This was a mere transmittal.

Mr. Finn: You can go ahead and answer.

The Witness: The memo of April 6, 1967, reads as follows:

"From the Chief of the Real Estate Branch," that is in the Washington Region, Post Office Department, to the Director of Realty Division, Realty Review Branch, Room 4432, Bureau of Facilities, Post Office Department, Washington, D. C., 20260.

Dep. Nov. 19, 1968

page 18 } "This will refer to the recent report submitted by Real Estate Officer Flora concerning the acquisition of the property at the corner of Lee Highway and Prosperity Avenue in connection with the above-named major facility. Real Estate Officer Flora has obtained an option on approximately 4.5 acres of land at $1.25 per square foot. It is believed that the market data submitted previously will support the price of this option and I recommend prompt acceptance.

"In regards to the property which has been purchased by the Texaco Company, it appears that in the event you feel it necessary to acquire this property, immediate condemnation proceedings should be initiated. In this regard it should be noted that Texaco is presently actively developing the property for their use and any delay in the declaration of taking may result in a higher cost to the government. It is therefore recommended that prompt action be taken to condemn the Texaco property in the event such acquisition is considered necessary."

And it is signed "R. K. Reagan" and initialed by "M.C.M." which is Milner C. Matthews.

By Mr. Sanders:

Dep. Nov. 19, 1968 page 19 } Q. And Mr. Reagan was Mr. Matthews' chief at that time, is that correct?

A. That is right.

Q. Now, the Texaco property referred to—

Mr. Lillard: At this point I would like to object to the inclusion in this record of a letter from Mr. Reagan which appears to me to contain statements which would be hearsay. Mr. Reagan is not present. I do not object to the inclusion in this record of a memo to the effect that the option contract was transmitted, but I do object to any use of the opinions of Mr. Reagan as expressed in the letter.

By Mr. Sanders:

Q. Now Mr. Finegan, that letter referred to a report of an employee named Flora, is that correct?

A. That is correct.

Q. And would it be correct then that you did see a copy, or you have a copy in the file there of the report from Mr. Flora?

A. I have an original.

Q. Of Mr. Flora's report?

A. Yes.

Q. Mr. Finegan, these men are employed in the same capacity as you are, to the extent that they are the Post Office Department's men who acquire and make determinations and gather facts and so forth as to the purchasing of these sites, is that true?

Dep. Nov. 19, 1968 page 20

A. To a limited extent.

Q. And the information you received from them I assume is used by you in making certain determinations also?

A. That is true.

Q. And in Mr. Flora's report to you, which you had knowledge of at the time you received the option, along with the option, also recommended purchase of this piece of property, did it not?

A. I have not reviewed Mr. Flora's memo since the thing came in.

Q. If you have it there in front of you, whether it states that or not, did he recommend purchase of it at the option price?

A. That is what he recommended to his superior.

Q. That is the report that Mr. Reagan would have been referring to in his letter, then?

A. It is.

Q. What is the date of the communication from Mr. Reagan, sir? I don't believe, maybe you stated that—

A. I read that into the record.

Q. I don't recall what it was.

A. April 6, 1967.

Dep. Nov. 19, 1968 page 21

Q. Now, the file that you are looking at, Mr. Finegan, is that your file, in your office, is that kept in your office?

A. No, it is not kept in my office.

Q. Is that what they call the headquarters file?

A. Yes, sir.

Q. And that is the file maintained by the Post Office Department on this subject piece of property?

A. Yes, sir.

Q. Containing copies of all communications, agreements, et cetera, which relate to this subject property?

A. This is one of a number of files for the Northern Virginia Facility.

Paul V. Finegan

Q. Yes, sir.

A. It is maintained, I cannot be sure that it has all copies of pertinent material in it, in fact it would not.

Q. Why would it not?

A. Because there are other offices that are interested in developing Northern Virginia Facilities and may have considerations in their files.

Q. But the memos which we have been referring to here are copies and/or originals of memos and communications within the Post Office relating to the business of the acquisition of this piece?

Dep.
Nov. 19, 1968
page 22 }

A. That is true.

Q. Where would the directive have originated which eventually sent Mr. Flora in search for additional land for this facility?

A. I have no recollection of that at this time.

Q. Would you, yourself, have had anything to do with this? Would it have come through you at all?

A. It could have.

Q. So at one point prior to the date of this option of March 30th, someone in the Post Office Department at some level decided to seek additional land for this major facility, is that true?

A. Not to my knowledge.

Q. Well, in other words, you, yourself, had no part whatsoever in the original decision to look for additional property?

A. I didn't say that.

Mr. Lillard: Object to that question. He has not testified as to any decision to purchase this property except one.

Mr. Sanders: I think I stated "prior" to the option.

Dep.
Nov. 19, 1968
page 23 }

Mr. Lillard: But, the one he testified to was not prior to the option, that is why I am objecting. He testified to a decision made on June 6, 1967, and that is the only one he has testified to.

Mr. Sanders: I will rephrase the question.

By Mr. Sanders:

Q. Just so I understand, we understand, you personally had no connection with this additional piece of property in any way as to directing anyone to go out and look for additional property prior to March 30 of 1967, the date of the option that Mr. Flora secured?

A. I can only answer you like I did before, I have no present recollection of it.

Q. Would your records reflect whether you sent any communications to Mr. Reagan, Mr. Matthews, or Mr. Flora prior to March 30th in relation to this property?

A. It may.

Q. Could I ask you to just review it for that purpose, please?

The Witness: Is this proper?

Mr. Finn: It is part of the deposition. You can refer to your records to refresh your recollection.

Dep. Nov. 19, 1968 page 24

The Witness (Examining file): I see no record of it, not in this file.

By Mr. Sanders:

Q. So then would it be correct to state that your first knowledge of a determination to seek more property at the Prosperity Road site was on April 6th when you received the copy of the option and the communications of Mr. Reagan and Mr. Flora?

A. It would not be a fair assumption.

Q. It would be a fair assumption to say you did have something to do with it prior to that time?

A. Your question, I cannot respond to it that way.

Q. You said it would not be a fair assumption to say you didn't know about it prior to April 6th, is that right?

A. I knew about it.

Q. How did you know about it prior to then?

A. It may have been just word of mouth, I have no knowledge of that.

Q. But you do state that you did know about a desire to acquire more property?

A. That is one point I object to, "desire to acquire more;" "desire to consider more property" is more appropriate.

Dep. Nov. 19, 1968 page 25

Q. All right. Now, after April 6th, and your receipt of the option, what did you next do with regard to the option?

A. We took no action with respect to the option.

Q. You say "we," who is "we?"

A. The Post Office Department.

Q. Who would make that decision not to take any action?

A. I don't know.

Paul V. Finegan

Q. It would not have been you?

A. I have no information on that. I had no demand to acquire a piece of land.

Q. What did you do, yourself, with the papers you received from Mr. Reagan?

A. It stayed in the file without any action by headquarters.

Q. Were the papers also sent to anyone in the Postmaster General's office or, for instance, Mr. Coffman?

A. Not to my knowledge.

Q. Did you communicate with him when you received the option?

A. Not to my knowledge.

Q. Mr. Finegan, did anyone else receive a copy of the option, according to those records and the letter of transmittal?

A. I have no information on that point.

Dep. Nov. 19, 1968 page 26 } Q. Therefore, according to your records, the only person who received a copy of the option was you, is that correct?

A. So far as I am concerned, I think I received all copies of the option.

Q. At that—

A. That were made available by the Region to headquarters, and I passed no copies of them out.

Q. Now, if at that time the Post Office liked the option, could you have said, "Purchase the property?"

A. I could have.

Q. Could have said this without consulting anyone else?

A. I could have, the same as anyone else could.

Q. Well, does Mr. Reagan have authority to purchase, would he have had at that time authority to purchase it without your approval?

A. He would not have had authority to purchase it then or now.

Q. He would have required your approval?

A. It would have required headquarters approval, headquarters is the only one to purchase property at this level.

Q. Are you a part of headquarters?

Dep. Nov. 19, 1968 page 27 } A. I am a part of headquarters, as is in my record.

Q. And that would have been you and Mr. Coffman that would have had to make the decision?

A. No.

Q. Who?

A. There are intervening ones that have to be taken into consideration, the Assistant Director of Real Estate Management has been eliminated in your consideration, as has been the Director of Real Estate.

Q. All right.

A. Those are in the line of command, and are between me and Mr. Coffman.

Q. All right. With regard to the option of March 30, no action was taken?

A. No action was taken.

Q. And you don't know why and had nothing to do with the decision not to accept the option, is that correct?

A. I had nothing to do with not accepting it.

Q. Did you have any recommendation yourself to any of your superiors concerning this option?

A. I have no information on that, no recollection of that.

Dep. Nov. 19, 1968 page 28 } Q. Now, after April 6th, and prior to the expiration of the option, did you consult with anyone concerning the option and/or receive any communications from anyone concerning this option?

A. I don't know.

Q. Do your records reflect whether the Post Office Department did that, please?

A. Would you repeat the question, please?

Q. After April 6th and prior to May 1st, did you or did you, yourself, consult or confer with anyone concerning the option or receive any communications with relation to acceptance or rejection of this option?

A. Just a second. What is your April 6th date?

Q. That was the date I believe of the memo from Mr. Reagan to you containing the option which had been signed, according to the copy, on March 30.

A. All right. Between that date and what?

Q. The expiration of the option, May 1st.

A. Did I communicate with anyone?

Q. Yes, concerning the option.

A. Just headquarters personnel.

Q. And were you directed or was the decision made during that period of time not to accept the option or to pick up the option?

Dep. Nov. 19, 1968 page 29 } A. Yes, it was. But, we did not acquire the property.

Q. Did you partake in that decision?

Paul V. Finegan

A. No, sir.

Q. Did you receive that from your superiors?

A. Verbally.

Q. Verbally not to accept the option?

A. We didn't require the property.

Q. Didn't require the property?

A. That's right.

Q. And what was the date that that decision was made or communicated to you in any event?

A. I see no date on it.

Q. Now, to your knowledge, did price in the option have anything to do with the decision that the Post Office Department did not require this piece of property?

A. I have no knowledge of it.

Q. Then, what was your next connection, sir, after the expiration of the option, with this subject piece of property? What was the date of your next, according to your records or your memory, that you had anything to do with the subject piece of property?

A. I would say May 23rd.

Dep. Nov. 19, 1968 page 30

Q. Had you communicated with any of the owners or the persons possessing an interest in the property prior to that time?

A. No, sir.

Q. Had Mr. Poe called you or you called him prior to that time?

A. I had not.

Q. Then, on May—

Mr. Lillard: Excuse me. I don't believe that question was fully understood.

Mr. Sanders: Can you read that back?

Mr. Lillard: Off the record.

(There was discussion off the record.)

Mr. Lillard: May we change the answer to, "There was no communication between Mr. Poe and me?"

The Witness: None whatsoever.

By Mr. Sanders:

Q. I believe you testified earlier that you did not make a record of any phone call, if any, from Mr. Poe?

A. I did not.

Q. Either before or after May 23rd?

A. That is correct.

Q. Do you recall a phone call from Mr. Poe?

A. That is correct.

Dep. Nov. 19, 1968 page 31

Q. And you believe it was after the contract had been executed?

A. I know it to be after.

Q. On what basis do you know it to be after?

A. Because of my dealings with the owners.

Q. Now then, according to your testimony, I believe the first time you got back in touch with the owners was on June 8th?

A. That is correct.

Q. Did you call them at that time?

A. I called Beard, and Nagel came with him on June 8th, 1967.

Q. And on May 23rd the decision had been made to make an all-out effort to acquire this piece?

A. No, sir.

Q. No?

A. No, sir.

Q. When was that decision first made?

A. June 6th.

Q. And what was the May 23rd communication?

A. That was when I initiated action.

Q. When you say you initiated action, what do you mean by that?

A. Internal action.

Dep. Nov. 19, 1968 page 32

Q. Toward seeking acquisition of this piece of property?

A. Yes, sir.

Q. So, prior to May 23rd, some time prior to May 23rd a decision had been made that the Post Office did in fact need this piece of property, is that correct?

A. Not to my knowledge.

Q. Are you saying then it was made on May 23rd?

A. It may have been.

Q. But in any event—

A. I had an internal communication on May 23rd, and the final determination was made to go after the piece of property on June 6th.

Q. Now, is it the normal course of business in the Post Office Department in regards to your position for you to contact the owner of a piece of property seeking to acquire it, you, personally?

A. No, sir.

Paul V. Finegan

Q. Why was it done in this case?
A. I don't have any answer to that.
Q. And you state it was done by telephone and not by mail?
A. Yes, sir.

Dep. Nov. 19, 1968 page 33

Q. Now, when you talked to Mr. Beard on June 8th, is it not true that the subject of Mr. Poe came up?
A. Yes, sir.
Q. And is it not true this—
How did the subject come up?
A. I raised the question.
Q. Why did you raise the question, sir?
A. Because there had been agency.
Q. How did you know there had been an agency, sir?
A. I don't have an answer to that. I don't recall.
Q. Mr. Poe is not referred to in any of your records, is he, as an agent for the owners, or is he?
A. I have no idea how that information was made available to me, but I knew it.
Q. All right, sir. At that time was it not your intention to make sure that there was no misunderstanding with regard to Mr. Poe's agency and his position in the matter, in other words, that you wanted it known you were aware of this and it was Mr. Beard's problem, so to speak?
A. I was aware that there had been a reputed agency with the Virginia Land Company, it wasn't any aspect of that, I wasn't concerned with, my first interest was in the purchase of the property.

Dep. Nov. 19, 1968 page 34

Q. Then I believe you stated that you raised the subject of Mr. Poe's agency?
A. As I recall, I did.
Q. And in what context, sir, did that subject arise?
A. In the course of our negotiations.
Q. What did you ask or say to Mr. Beard, do you recall, in relation to this?
A. I don't know the exact words. We discussed that there had been an agency in the past.
Q. Well now, Mr. Finegan, would it not be true that at that time the purpose of your conversation concerning Mr. Poe was to determine that his agency had in fact been in the past and not in the present?
A. Would you repeat that?
Q. I will rephrase it.

Paul V. Finegan

You referred to your discussion, saying that you knew there had been an agency in the past; as of June 8th, you stated, is that correct?

A. I understand there had been an agency.

Q. At that time you did not know whether there still was one or not?

A. I did not know.

Q. And it was your understanding that there was no agency as of June 8th, is that correct?

Dep. Nov. 19, 1968 page 35

A. That was my understanding.

Q. And the purpose of your asking Mr. Beard about it was what?

A. I wanted to avoid any complications.

Q. And what did Mr. Beard say to you in relation to Mr. Poe?

A. He said there had been an agency in the past.

Q. Did you not state to them that if there were any problems with the agency, that they must clear up with their attorneys and Mr. Poe and that the Post Office Department had no interest in that matter?

A. Not to my recollection.

Q. Now, in this phone call with Mr. Beard, did you discuss price?

A. No, sir.

Q. Was a meeting arranged for that day for Mr. Beard and Mr. Nagel to come in?

A. I believe it was.

Q. And did they in fact come in that day?

A. They came in on June 8th.

Q. Did you at that time discuss price, terms, and so forth for the purchase of the property?

Dep. Nov. 19, 1968 page 36

A. Yes, sir, we did.

Q. Do you recall how the price of $225,000 was arrived at?

A. We had had the property appraised by an MAI, and on the basis of the appraisal I formed a judgment as to what I considered the value of the property.

Q. Do you know the date of the appraisal?

A. I do not.

Q. Is that reflected in your records?

A. We had several made over there, I don't recall.

Q. Do your records reflect when the Post Office Department ordered an appraisal of that piece of property?

Paul V. Finegan

A. I believe that was included in an appraisal dated September, 1966.

Q. Pardon me?

A. I believe that was in an appraisal dated a year before.

Q. And subsequent to that appraisal you had received, subsequent to the appraisal you just referred to, you received the recommendations of Mr. Reagan and Mr. Flora of April 6, 1967, is that correct?

A. That is correct.

Q. So, after the option was executed there was never an appraisal of the property until the date of the contract?

Dep.
Nov. 19, 1968
page 37

A. Not to my knowledge.

Q. All right. Do you recall, Mr. Finegan, the negotiations on the price for the piece of property and what you stated to Mr. Beard?

A. On negotiations I offered him a price that I considered fair and reasonable. Most of the negotiations had to do with who would pay for this, who would pay for that.

Q. Referring to what?

A. Title evidence, surveys.

Q. Legal fees?

A. I don't think we had any legal fees conversation concerning that property.

Q. What was your first offer to them, as far as price goes?

A. I think it was $225,000.

Q. And what was their response to that?

A. Favorable.

Q. Meaning they stated at that time as far as they knew they could accept that price?

A. I don't recall any such words.

Q. Did they ask for more money after you offered $225,000?

Dep.
Nov. 19, 1968
page 38

A. They wanted more money, I couldn't justify any more, and I so advised them.

Mr. Lillard: Excuse me a moment. Could it be possible—off the record.

(There was discussion off the record.)

By Mr. Sanders:

Q. Now, some time after June 8th—strike that.

Do you recall any price they mentioned as being acceptable to them?

A. No, I do not.

Q. Do you recall any discussion concerning the price in the option?

A. No, I do not.

Q. How was the meeting adjourned, so to speak, how was the subject left when Mr. Beard and Mr. Nagel left your office?

A. They were going to go back and discuss it with their associates and let me know.

Q. At that meeting was there any discussion concerning Mr. Poe that you can recall?

A. There was discussion.

Q. And what was that discussion?

A. I don't know. I don't know that it was Mr. Poe as an individual, it was the Virginia Land Company, I believe.

Dep. Nov. 19, 1968 page 39 }

Q. Well, do you recall the substance of that discussion?

A. As I recall, the substance of the way it was left, they were going to look into the matter of agency.

Q. Was there any discussion at that time of their need or desire for a cash transaction?

A. Not to my knowledge.

Q. Is that the normal way the Post Office Department purchases property, by cash?

A. It is.

Q. Do you recall when you mentioned that it would be all cash, their reaction to that?

A. No, I do not.

Q. Now, to go back a minute, Mr. Finegan, was the Post Office Department during this period of time also interested in the Texaco property?

A. What period of time do you have reference to?

Q. The period of time of the communication from Mr. Reagan in which he mentioned the Texaco property, relative to condemnation of it, the need for quick action, and so forth.

A. There was consideration given by the Post Office to the Texaco property.

Q. Did you, yourself, or to your knowledge, did anyone under you contact the Texaco people concerning the purchase of that piece of property?

Dep. Nov. 19, 1968 page 40 }

A. I never did.

Q. Do you know if anyone else did, or you directed anyone else to look into it?

Paul V. Finegan

A. No one in my office contacted them, to the best of my knowledge. There would be no need for it.

Q. Could someone from the Post Office Department have called Texaco to talk about their piece of property?

A. Yes, they could have.

Q. Do you know whether or not, from your memory or, if you have to, from your records, whether the Texaco property—there was any contact with that piece during the option period under question here?

A. Not to my knowledge.

Q. Or after the option period?

A. I have no knowledge of anyone personally contacting Texaco in the matter.

(There was discussion off the record.)

Mr. Sanders: I don't have any more questions now.

REDIRECT EXAMINATION

By Mr. Lillard:

Q. Mr. Finegan, Mr. Reagan is in charge of a region for the Post Office Department?

Dep.
Nov. 19, 1968
page 41

A. Regional Real Estate Branch.

Q. Regional Real Estate Branch?

A. Yes, sir.

Q. In that capacity did he have authority to determine that the Post Office Department would or would not buy this piece of property?

A. He did not.

Q. Did anyone under his general supervision have authority to make that decision?

A. No, sir, they did not.

Q. Did anyone in the Post Office Department who is subordinate in any way to you have authority to make this decision?

A. They would not, they did not.

Q. Now, you indicated that $225,000 was the highest price you could justify?

A. Yes, sir.

Q. Do you recall whether or not Mr. Beard and Mr. Nagel asked you to pay $243,376.25, or did they mention a figure higher than two and a quarter?

Paul V. Finegan

A. They mentioned a figure higher than $225,000, but I am not precise in my recollection as to what that figure was.

Dep. Nov. 19, 1968 page 42

Q. Well, in terms of your authority to purchase this piece of property, did the matter—did it matter what the figure was if it was higher than $225,000?

A. I have no authority to purchase property, all I do is recommend that it be purchased or not be purchased. If I cannot justify a price, I will try to get it to a figure that I can justify. I could not justify anything higher than $225,000 with the other incidentals that are included in the purchase contract.

Answering the second part of that, it does make a difference what we pay for property.

Q. If a price is to be considered at all which is higher than the price you can justify, who would give that consideration, who would make a determination with respect to the higher price? Could anyone?

A. Would you rephrase the question, please?

Q. Suppose the owners here had insisted that they be paid $243,376.25, would anyone in the Post Office Department above or below you in the chain of command have had authority to purchase at that price?

A. They would have had authority to purchase it but probably would not have purchased it.

Q. Why do you say that?

A. Because it could not be supported economically, and what might have happened in that event is condemnation.

Dep. Nov. 19, 1968 page 43

Q. How frequently do your superiors pay a price higher than the one you feel you can justify?

A. I have no recollection of any time when that has occurred.

Q. It is your testimony, then, that while you have held your present position, the Post Office Department has never paid a price for real estate higher than the one you felt you could justify?

A. Not to my recollection. Pardon me a second.

(There was discussion off the record.)

Mr. Lillard: I have no further questions.

Paul V. Finegan

RECROSS EXAMINATION

By Mr. Sanders:

Q. Mr. Finegan, I believe you stated that you do not have authority, yourself, to purchase property, but only to recommend or not recommend the purchase of property, is that correct?

A. That is correct.

Q. Why did you not make a recommendation with regard to this piece during the option period?

A. Because the determination was made that the property was not required.

Dep. Nov. 19, 1968 page 44

Q. Do you know why that determination was made?

A. No, I do not.

Q. Do you know when, I believe I asked this before, do your records show when this determination was made? It could have been May 1st, the date of the expiration of the option, that this was made, is that correct?

A. That is your guess.

Q. I say could it have been then as well as any time before?

A. I have no information on that at all. That would be speculative.

Q. When you received this option, would it have been your normal practice to have made a recommendation based on the information you received from Mr. Flora and Mr. Reagan and your own knowledge and experience, to your superiors relative to acceptance or rejection of the option?

A. Normally that would follow in a regular case.

Q. And then is it your testimony that before you could do this you received word that the Post Office Department did not want that piece?

A. We never analyzed and briefed that option and recommended acceptance or rejection, it laid dormant in the files.

Dep. Nov. 19, 1968 page 45

Q. Would it not be normal practice with a 30-day option in the Post Office Department's hands to make some determination with regard to this valuable piece of paper?

A. Normally, yes.

Q. Now, does—

A. However, this property was close to headquarters, it is what we term a major facility to be handled by headquarters, it has proximity to Washington. If it were a routine case at a point distant from Washington, I would give it seri-

ous thought, but the determination was made we didn't need it.

Q. So is it true then that this piece of property and this facility was different to the extent that headquarters had more to do with it than they would, say, with a remote smaller piece of property in some outlying area?

A. The improvement in Northern Virginia is what we term a major facility, and as such is the exclusive responsibility of headquarters for its development.

Q. I believe you also stated, sir, that to your knowledge the Post Office Department has never paid a higher price than what you recommended, is that true?

A. Not to my knowledge.

Q. Even through condemnation?

Dep. Nov. 19, 1968 page 46

A. I don't have an answer to that because I only recommend condemnation, I do not necessarily find out what a judgment may be in a condemnation case.

Q. How many major facilities have been constructed, or properties acquired for them, as of June 8th of 1967 in the Washington metropolitan area?

A. None.

Q. And how many dealings have you personally had with the acquisition of sites in Northern Virginia and the value of property in that area?

A. I negotiated for the property adjoining this and purchased it.

Q. Is it not normal Post Office Department procedure to have reappraisals of property prior to purchase if there is a lapse of time prior to approval?

A. No, we have no policy on that.

Q. So then your recommendation was based on an appraisal of the previous fall, of September of '66?

A. I believe that was the appraisal that I formed my judgment on.

Q. Just a couple more.

Do you recall whether or not you were aware of Mr. Poe's agency during the option period?

Dep. Nov. 19, 1968 page 47

A. I do not recall.

Q. And I believe you testified you don't recall how or exactly when you were made aware of the agency?

A. I do not.

Q. In any of your discussions with Mr. Beard and Mr.

Nagel, in discussing Mr. Poe's agency, was it, or did the subject ever come up if there was no agency Mr. Beard and Mr. Nagel could accept a lesser price?

A. No, sir.

Q. Did this ever enter into your mind at all?

A. No, sir.

Q. The fact of an agency or not—the fact of whether there was an agency or not was irrelevant to you as far as your consideration was concerned?

A. It was.

Q. Mr. Finegan, do you in the normal course of your business when you receive an option, and after it comes up to you, do you negotiate the option from that point after it is sent up from your field man?

A. Are you speaking about conditions that existed at that time, or currently?

Q. At that time.

A. It was normal for me to negotiate for that property as well as the adjoining property, and I did.

Dep. Nov. 19, 1968 page 48

Q. Was it normal practice to negotiate once an option was secured, either with the owner or with his agent if an agent had been employed?

A. Normally I would deal with the owner. I can get more answers faster from the owner than I can from an agent.

Q. During this option period—

A. Unless the owner tells me, "Negotiate with someone else," I will do it with the owner.

Q. During this option period, or the option in question, did you at that time decide to negotiate the option—strike that.

Now, it is true, is it not, Mr. Finegan, that, to your knowledge, Mr. Poe secured this option from the sellers, which was presented to the Post Office Department, the option I am referring to now?

A. I have no personal knowledge of that.

Q. In other words, you just don't recollect where Mr. Poe first came to your attention and how?

A. I answered that before, I didn't, and how the option was secured is merely hearsay so far as I am concerned.

Mr. Sanders: All right, sir. I don't believe I have anything further.

Mr. Lillard: Thank you, Mr. Finegan.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

INDEX TO RECORD

	Page
Writ of Error Awarded	1
Record	2
Motion for Judgment	2
Answer to Motion for Judgment	4
Order—October 10, 1967	5
Answer	7
Judgment—December 26, 1968	8
Notice of Appeal and Assignments of Error	9
Witnesses:	
Thomas L. Poe	11
Edward Kemper Beard	48
Eugene Hooper	66
William A. Nagel	71
Depositions:	
John L. Flora	78
Milner C. Matthews	88
Paul V. Finegan	115
Proceedings	16, 20, 34, 48, 62, 76