

1975 S.C. Op. Atty. Gen. 204 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4134, 1975 WL 22430

Office of the Attorney General

State of South Carolina

Opinion No. 4134

September 26, 1975

*1 Code Section 56–1545.16(11) does not prevent a broker from accounting for money collected on behalf of the principal, and placing the money in trust pending a determination of the broker's claim to such funds as partial payment for services rendered by the broker on the underlying transaction.

TO: H. T. Owings, Jr.
Chief Investigator
S. C. Real Estate Commission

QUESTION PRESENTED:

Does S. C. Code Section 56–1545.16(11) require a real estate broker to remit all rent moneys which he has acquired on behalf of his principal, regardless of the agents' general right to set-off a debt owed by the principal to the agent in the same transaction?

STATUTES, CASES, ETC:

Code of Laws of South Carolina, 1962, as amended, Section 56–1545.16(11); 3 C. J. S. Agency, Section 314; 80 C. J. S. Set-Off and Counterclaim, Sections 9–11; [Brown v. Lowe](#), 188 S. E. 182, 182 S. C. 9.

DISCUSSION OF ISSUES:

An individual principal contacted the Real Estate Commission complaining that a broker had refused to pay him all rentals collected by the broker on the principal's property. The broker replied that these moneys are held in a trust account and have been fully accounted for to the principal. The broker alleges these funds represent a portion of the debt owed by the principal to the broker on the transactions from which the money in question originated and that the broker has a right to set this money off against the debt owed by the principal.

The right of an agent to deduct any lawful claims of the agent arising out of the agency, by way of compensation, reimbursement, or interest, when rendering an account between principal and agent, is recognized as a general rule. See C. J. S. Agency § 314. This right to offset mutual demands is founded on equitable principles, and tendency of the courts is to liberalize rather than restrict such right. [Brown v. Lowe](#), 188 S. E. 182, 182 S. C. 9.

S. C. Code Section 56–1545.16(11) allows the Real Estate Commissioner to make investigations and suspend or revoke licenses where the licensee is found guilty of ‘failing, within a reasonable time, to account for or to remit any moneys coming into his possession which belong to others.’ [emphasis added]. Under this language, a broker has the right to account or remit to the principal. Such option is consistent with a right to set-off existing in the agent for debts owed by the principal to the agent on the underlying transaction. As long as all moneys have been fully accounted for and the funds in dispute remain in trust, subsection (11) supra, is satisfied.

Clearly, if this Section of the Code had been intended to eliminate a fundamental part of agency and equitable law, such intent would have been spelled out in detail. At the very least, the conjunctive word 'and' would have been used instead of the disjunctive word 'or', which gives the broker a choice of accounting or remitting.

*2 Therefore, after fully accounting for the funds in trust, the broker has complied with the statutory mandate. The issue of indebtedness and final right to the money held in trust remains for judicial determination or agreement between the parties.

CONCLUSION:

Code Section 56-1545.16(11) does not prevent a broker from accounting for money collected on behalf of the principal, and placing the money in trust pending a determination of the broker's claim to such funds as partial payment for services rendered by the broker on the underlying transaction.

George C. Beighley
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