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SULLIVAN, C. J., dissenting. The majority concludes that the plaintiff, Location Realty, Inc., was not duly licensed as a real estate broker and, therefore, would be barred by General Statutes § 20-325a (a)<sup>1</sup> from bringing its action for a real estate broker's commission against the defendant, General Financial Services, Inc., but for the provisions of General Statutes (Rev. to 1997) § 20-325a (c). The majority further concludes that, under § 20-325a (c), a licensee who is not "duly licensed" is not barred from recovering a commission if denying such recovery would be inequitable under the facts and circumstances of the case. I agree that the plaintiff was not duly licensed,<sup>2</sup> but do not agree that § 20-325a (c) applies to persons or entities that are not duly licensed. Because I would conclude that the plaintiff is barred from bringing this action, I dissent.

General Statutes (Rev. to 1997) § 20-325a (c) provides: "Nothing in subsection (a) of this section or subdivisions (2) to (6), inclusive, of subsection (b) of this section shall prevent any licensee from recovering any commission, compensation or other payment in respect to any acts done or services rendered, if such person has substantially complied with subdivisions (2) to (6), inclusive, of subsection (b) of this section and it would be inequitable to deny such recovery." The majority recognizes that § 20-325a (a) bars a person who is not "licensed," i.e., is not duly licensed, from bringing an action for a commission, but argues that a licensee who is not duly licensed may, nevertheless, recover a commission under § 20-325a (c) if, under the "facts and circumstances" of the case, it would be inequitable to preclude recovery, because § 20-325a (c) specifically provides that § 20-325a (a) will not bar such recovery by a licensee. In my view, however, it is inconsistent for the majority to conclude, on the one hand, that the word licensed, as used in the first clause of § 20-325a (a), means duly licensed, that is, licensed in accordance with the provisions of chapter 392, and to conclude, on the other hand, that the word licensee, as used in § 20-325a (c), does not mean person duly licensed under chapter 392, but means person who has obtained a license, whether or not in accordance with the governing statutes. Moreover, if the legislature had intended to allow an improperly licensed person to recover a commission when it enacted § 20-325a (c), it would have specified that such an action would be allowed only if the person had substantially complied with the licensing provisions, just as it specified that such an action is allowed only if a person has substantially complied with § 20-325a (b). I find it highly unlikely that the legislature intended that a plaintiff who failed to satisfy the technical requirements of § 20-325a (b) could

recover a commission only by establishing *both* that (1) the listing contract was in substantial compliance with subdivisions (2) through (6) of that provision *and* (2) it would be inequitable to deny recovery, but that a plaintiff who failed to satisfy the fundamental licensing requirements of chapter 392 could recover a commission simply by establishing that it would be inequitable to deny recovery under some unspecified set of facts and circumstances.

I would conclude that, by including the reference to § 20-325a (a) in § 20-325a (c), the legislature merely intended to underscore that, by its very terms, § 20-325a (a) does not bar a licensee, i.e., a person who is duly licensed, from recovering a commission. I recognize that, under this interpretation, the reference to subsection (a) in subsection (c) is gratuitous because nothing in § 20-325a (a) suggests that a licensee is barred from recovering a commission, regardless of whether the licensee has complied with § 20-325a (b). Nevertheless, confronted with a choice between a reading of § 20-325a (c) that renders the reference to subsection (a) gratuitous and a reading that both gives less weight to the basic licensing requirements of chapter 392 than to the technical listing agreement requirements of § 20-325a (b) and imports into subsection (c) a notion that is at odds with the basic statutory scheme, namely, that persons who are not duly licensed may enjoy the privileges granted to duly licensed persons, I would choose the former reading.

This conclusion is supported by the legislative history of § 20-325a (c). During joint committee hearings on the proposed legislation, Larry Hannafin, representing the department of consumer protection and the Connecticut real estate commission, specifically stated that “the proposed changes expand [*§ 20-325a (b)*] so that if a broker in a real estate transaction has substantially complied with the provisions of this chapter, or this section, the broker will be permitted to pursue their claims for payment of the licensee[’s] fees in our court system.” (Emphasis added.) Conn. Joint Standing Committee Hearings, Insurance and Real Estate, 1994 Sess., p. 91. Thus, immediately after referring to “this chapter,” Hannafin corrected himself by saying “or this section” to clarify that the new legislation affected only “this section,” meaning § 20-325a (b). He did not suggest that the legislation expanded the right to bring an action when the licensing requirements of chapter 392 had not been met. Hannafin also stated that “[r]ight now under [*§ 20-325a (b)*], if as much as a date [in] the listing contract or authorization to ask for another is deleted from that listing agreement [the broker is barred] from going to court to seek payment of the commission and often this has resulted in unjust enrichment to various sellers of properties.” *Id.* In my view, this legislative history clearly indicates that § 20-325a (c) was intended solely to ameliorate what had been the draconian

results of failing to comply strictly with the technical requirements of § 20-325a (b).

Indeed, the majority recognizes that § 20-325a (c) was enacted in response to judicial decisions holding that the failure to comply strictly with § 20-325a (b) barred the right to recover a commission and that the “the task force that drafted the legislation considered that the strict construction of [*§ 20-325a (b)*] had resulted in some cases of ‘unjust enrichment.’” (Emphasis added.) It then concludes that this fact “suggests that the question of recovery, despite a failure to comply strictly with *subsection (a)* of § 20-325a, must be determined on the basis of all of the facts and circumstances of the case.” (Emphasis added.) The fact that the legislature intended that a person should not automatically be deprived of a commission for failure to comply strictly with the formal requirements for a listing agreement set forth in § 20-325a (b) does not mean that the legislature intended that a person should not automatically be deprived of a commission for failure to comply with the basic statutory licensing requirements.<sup>3</sup>

In summary, I do not agree with the majority’s conclusion that, under § 20-325a (c), a person who has failed to comply with the licensing provisions of chapter 392 may be permitted to bring an action for the recovery of a commission if, under the facts and circumstances of the case, it would be inequitable to deny recovery. I would conclude that § 20-325a (a) acts as an absolute bar to the bringing of such an action by a person who is not duly licensed under the provisions of chapter 392 and that § 20-325a (c) does not apply to such persons. Because the plaintiff was not duly licensed, I believe that this action for a commission is barred. Accordingly, I dissent.

<sup>1</sup> General Statutes § 20-325a (a) provides: “No person who is not licensed under the provisions of this chapter, and who was not so licensed at the time the person performed the acts or rendered the services for which recovery is sought, shall commence or bring any action in any court of this state, after October 1, 1971, to recover any commission, compensation or other payment with respect to any act done or service rendered by the person, the doing or rendering of which is prohibited under the provisions of this chapter except by persons duly licensed under this chapter.”

<sup>2</sup> I also agree with the majority’s implicit determination that this court has jurisdiction to determine that the plaintiff was not duly licensed for purposes of § 20-325a (a), even though the real estate commission has original jurisdiction over “licensure and issuance, renewal, suspension or revocation of licenses concerning the real estate business.” General Statutes § 20-311b (b) (2). I do not believe, as the trial court found, that the effect of the court’s determination that the plaintiff was not duly licensed for purposes of § 20-325a (a) was to void the plaintiff’s license for the relevant annual periods. The effect was simply to bar the plaintiff from bringing an action to recover a commission. Any determination that the license was void, which, as the plaintiff points out, would have consequences beyond barring an action for a commission pursuant to § 20-325a (a); see, e.g., General Statutes § 20-325 (engaging in business of real estate broker without license is punishable by fine and imprisonment); must, in my view, be made by the real estate commission.

<sup>3</sup> I am perplexed by the majority’s argument that the linguistic distinction between “bringing or commencing” an action for a commission in § 20-325a (a) and “recovering” a commission in § 20-325a (c) “strongly suggest[s] that the right of a plaintiff who is not duly licensed nonetheless to recover must

be determined based on all of the facts and circumstances of the case.” The recovery allowed by § 20-325a (c) is clearly recovery in an action commenced or brought in a court of law. While § 20-325a (a) and (b) bar commencement of such an action and, therefore, recovery, under specified facts and circumstances, § 20-325a (c) permits recovery and, necessarily, the commencement of an action, under specified facts and circumstances. Thus, I cannot perceive the significance of the linguistic distinction relied on by the majority.

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