

Sellers: buyer reneged on nursing home deal

\$1.4 million arbitration award

A three-member arbitration panel unanimously ruled that the prospective buyer of a nursing home facility breached a \$28 million purchase-and-sale agreement by unjustifiably refusing to complete the sale, failing to follow its contractual obligation to discuss with the sellers any objections it had regarding the sale, and failing to apply for an operator's license within the contractual deadline.

Following a three-day hearing, the panel awarded the plaintiff sellers a \$1.4 million deposit (plus interest) that the buyer had previously placed in escrow as part of the agreement, and rejected the buyer's counterclaim for breach of contract and fraud.

The sellers operate a long-term care facility in Rhode Island and own the real estate where the facility is located.

On Feb. 22, 2018, the parties entered into a purchase and sale agreement, with the buyer agreeing to deposit \$1.4 million of the \$28 million purchase price in an escrow account. The agreement included a 45-day due diligence period (later extended to 60 days) and a specific process for addressing any issues that might arise during the period.

During the due diligence period, the buyer's representatives reviewed the sellers' financials and other aspects of the business, including an interim payment system set up previously by the sellers to address problems at the state level with processing Medicaid reimburse-



Nicholas B. Carter

ments. The panel found that the buyer did not state in writing any specific objections or concerns about the interim payment system.

The P&S agreement required, as a condition of terminating the transaction, written notice of objections followed by an in-person or telephone discussion between the parties concerning the objections. Any objections the buyer may have had were not adequately presented to the sellers, the panel found.

The panel rejected the buyer's various justifications for failing to follow the termination protocol, including its claim that the sellers' financial records were materially inaccurate.

The buyer "completely ignored" its obligation under the termination provision of the purchase agreement to seek a meeting with the sellers to establish "a dialogue between the



Suzanne Elovecky

parties concerning [any] objections," the panel wrote in its ruling.

The purchase agreement also required the buyer to file an application for an operating license for the nursing home facility by an agreed-upon deadline. The arbitration panel found that the buyer did not apply for the operating license, in breach of the contract.

Action: Contract

Injuries alleged: Breach of contract

Case name: Withheld

Court/case no.: Withheld

Jury and/or judge: N/A (arbitrated)

Amount: \$1.4 million

Date: June 26, 2019

Attorneys: Nicholas B. Carter and Suzanne Elovecky, of Todd & Weld, Boston (for the plaintiff)