

## Case law

### Case Details

**National ID:** Szegedi Ítéletábra Gf.I.30.552/2011/3. (BDT2013. 2945.)

**Member State:** Hungary

**Common Name:** link

**Decision type:** Court decision in appeal

**Decision date:** 22/03/2012

**Court:** Szeged Court of Appeal

**Subject:**

**Plaintiff:** Prosecutor General of the County of Bács-Kiskun

**Defendant:** Ingatlan Adatbank Centrum Ingatlanforgalmi, Értékbecslő és Szolgáltató Kft.

**Keywords:** standard contract, unfair terms

### Directive Articles

Unfair Contract Terms Directive, [ANNEX I, 1., \(e\)](#) Unfair Contract Terms Directive, [ANNEX I, 1., \(o\)](#)

### Headnote

A contractual term allowing the real estate agent to be entitled to the commission fee even if the agreement had not been concluded as a result of its intermediary activity is in contradiction with the principle of good faith and it provides the real estate agent with a unilateral and unjustified benefit.

### Facts

The defendant is a company providing - among others - real estate agency services. In its template, non-negotiable agreement for services, the defendant had set out that during the first 6 months of the contract, the defendant would be entitled to the entire commission fee if the real estate subject to its services is sold for any reason whatsoever, i.e. even if the sale and purchase agreement is not concluded as a result of the defendant's activities. Furthermore, the template agreement imposed significant payment obligation on the contracting party in case the contracting party fails to inform the defendant of every relevant agreement concluded with any potential buyer, or in case the contracting party fails to pay the commission fee in time.

The plaintiff contested the template agreement before court out of public interest. The plaintiff stated that the above terms of the template agreement used by the defendant is unfair and void, because on the one hand, such terms oblige the consumer to fulfil his obligations even if the defendant does not perform his, and on the other hand, they require the consumer who fails to fulfil his obligation to pay a disproportionately high sum in compensation to the defendant.

The first instance court granted the plaintiff's claims, accepting the plaintiff's reasoning as well. The defendant appealed the first instance judgement, but the second instance court upheld it with the same reasoning.

### Legal issue

If the real estate agent sets out its fee in the form of a commission fee in its general terms and conditions, the real estate agent becomes entitled to the commission fee only in case the agreement regarding the real estate is concluded as a result of the conduct of the real estate agent. The contractual term allowing the real estate agent to be entitled to the commission fee even if the agreement had not been concluded as a result of its intermediary activity is in contradiction with the principle of good faith and it provides the real estate agent with a unilateral and unjustified benefit.

### Decision

Is a contractual term allowing the real estate agent to be entitled to the commission fee even if the agreement had not been concluded as a result of its intermediary activity, considered unfair?

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### Related Cases

No results available

### Legal Literature

No results available

### Result

The second instance court rejected the defendant's claims, and upheld the decision of the first instance court.