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Real estate agents: Employees or contractors? Maybe neither and it costs them money

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Real estate agents long have been in the middle of a contentious debate about whether they should be considered [independent contractors](#) or [employees](#). Now, a lawsuit filed last week in state Superior Court could muddy the question even more.

It is claiming that in at least one case, they aren't employees or contractors, but instead are [franchisees](#) who pay a royalty fee as if they owned an McDonald's or Jersey Mike's.

Jason Leslie, a sales agent for [Exit Realty East Coast](#) in Holmdel, said he was required to pay the broker \$1,910 in transaction fees, which were technically no different than franchise royalty fees, the lawsuit said.

If Leslie truly was an independent contractor, his attorney said, he wouldn't have to pay the fee.

"That is a royalty, and you should have been told you are really buying a franchise," Gerald Marks, Leslie's Red Bank-based lawyer, said. "It converts the relationship from an independent real estate salesperson to a franchisee."



Exit Realty in Holmdel is improperly charging agents a transaction fee, a lawsuit says. *(Photo: Michael L. Diamond)*

The Holmdel office is a franchise of Canada-based Exit Realty, a fast-growing company that recruits agents in part by offering 100% of the commission without needing to pay what's known in the industry as a desk fee. The Holmdel office has about 35 sales representatives listed on its website.

The lawsuit adds a twist to a simmering debate in New Jersey over employee classification. Lawmakers in Trenton have introduced bills to tighten the definition of what determines if a worker is an employee or independent contractor.

In his lawsuit, Leslie makes a different case. He joined Exit last August and signed what's called a U.S. sales representative agreement, laying out the financial terms.

It included a "transaction fee" of \$50 to \$225, depending on the size of the commission, paid to Exit after the sale was finalized.

Leslie eventually paid close to \$2,000 in transaction fees in less the five months, the lawsuit said.

The lawsuit said the payment isn't a transaction fee at all, but a royalty fee that wasn't disclosed in the agreement.

The result? Leslie met the three-pronged criteria for a franchisee set up by the Federal Trade Commission: He operated under the Exit trademark; he operated under a set of instructions from the company; and he had to pay a royalty of at least \$500 in the first six months, Marks said.

Labor law: [Debate to continue over NJ bill rewriting rules for freelance workers, contractors](#)

It means Exit would have been required to disclose much more information to Leslie.

Robert M. Shirvanian Jr., the Exit broker in Holmdel, said he had just received the lawsuit and was discussing it with his attorney.

The relationship between brokers and agents has long been a source of contention. Most agents are independent contractors, free to work the hours they like. But some brokerages faced lawsuits arguing their workers were, in fact, employees.

The distinction is important. Employers are required to withhold income, Social Security, Medicare and unemployment taxes for employees, but not for independent contractors.

Coldwell Banker in 2016 agreed to pay \$4.5 million to settle a class action lawsuit filed by one of its agents in California who argued agents should have been classified as employees. The company didn't admit wrongdoing.

The question isn't likely to be resolved in New Jersey, either. The bill in the Legislature designed to clarify the employer-employee relationship exempts real estate agencies.

For now, New Jersey agencies operate with no industrywide standard, experts said. Some brokers charge agents office fees. And some charge transaction fees, said Barry Goodman, general counsel for [New Jersey Realtors](#), the trade group.

"It's all subject to negotiation, whatever (financial) model the broker wants to set up," said Goodman, who also is an attorney with Greenbaum, Rowe, Smith & Davis in Woodbridge.

Leslie's attorney said his client thought he was an independent contractor. But the transaction fee called the relationship into question.

"The whole relationship is improper," Marks said.