

Size matters

Tussle over pricey condo

By Steve Cuozzo

Last Updated: 1:25 AM, March 27, 2013

Posted: 11:23 PM, March 25, 2013



Steve Cuozzo

REALTY CHECK

Promgirl.com founder and racehorse owner David Wilkenfeld had a hot streak when his gelded colt Vyjack won four races in a row. He's likely to make the Kentucky Derby if he

runs well in the Wood Memorial on April 6, and was listed yesterday as a 10-1 Derby choice by Post handicapper Ed Fountaine.

Wilkenfeld has the magic touch as well with Promgirl.com, which calls itself the largest online seller of special-occasion dresses and boasted \$80 million in sales last year, according to Forbes.com.

But allegedly, Wilkenfeld's luck ran out when he took a broker's word on a luxury penthouse he's buying at 200 Chambers St. for \$13 million.



Promgirl.com founder David Wilkenfeld, pictured with "Prom" actress Aimee Lynn Chadwick, is suing the broker who sold him an ultra-posh \$13 million Chambers Street penthouse.

In a suit to be filed in Manhattan Supreme Court this week, Wilkenfeld now claims the seller's broker, Platinum Properties President Daniel Hedaya, lied to him about the sky-high pad's square footage, common charges and real estate taxes.

He wants to be reimbursed a whopping \$2.08 million — or four times the broker's commission — plus the difference between \$13 million and the penthouse's actual value based on, among other things, the claim that it's either 96 or 152 square feet smaller than the 4,700 square feet he alleges Hedaya said it was.

Lawsuits are hardly rare in the world of high-priced Manhattan condos. But this case involves two different issues which bedevil a growing number of deals — a unit's actual size, and the question of whose side a broker is really on.

Wilkenfeld, represented by lawyer **Adam Leitman Bailey**, has no dispute with the unidentified seller of the penthouse, which he's still buying and intends to close on next month.

The 30-story 200 Chambers St. overlooking the Hudson River opened in 2008. The lavish, 30th-floor Penthouse C

with 4.5 bedrooms is described as having “the finest attention to detail” including custom- milled dark oak floors and “acoustic attenuation features” to block noise. In an online video, Hedaya displays floor-to-ceiling windows with eye-popping views.

Wilkenfeld and Hedaya began talks about the unit in 2011 and a sale contract was signed on Nov. 1, 2012, as my colleague Jennifer Gould Keil reported in December.

The rags-and-racing mogul planned to move up from a smaller unit where he lives on the seventh floor of 200 Chambers St., which was listed by Douglas Elliman’s Julie Weintraub and Laura Matiz for \$6 million and is still on the market for slightly less, an Elliman rep said yesterday.

The penthouse was listed for \$16.5 million, down from a \$17.9 million “ask” in 2011. Wilkenfeld and the seller, repped by Platinum, agreed on a price of \$13 million and he put down a \$5.2 million deposit, according to the proposed suit.

But then Wilkenfeld noticed the condo offering plan said the penthouse had only 4,548 square feet. He says Hedaya laid the difference on a technical adjustment based on inclusion of hallway space — but his suit claims the unit is still 96 square feet smaller than Hedaya said.

Although Wilkenfeld acknowledges that the sale contract included the correct common charges and taxes, he says it was presented to him “for hurried execution by e-mail during the traumatic period of Hurricane Sandy,” which “pressured” him to sign it quickly.

Prior to then, Wilkenfeld says, Hedaya had given him “desirable” but false data in several conversations as well as on Platinum’s website and on Streeteasy.com. (The common charges and tax numbers which Wilkenfeld says are wrong were still posted on Streeteasy.com and Platinum’s site yesterday.)

In a related claim that might be the first based on a recent change in state law, Wilkenfeld says Hedaya failed to disclose that Platinum acted solely as the seller’s agent — not as an “honest broker” for both sides — and thus had an obligation only to fetch the highest possible price. Such disclosure required by law previously applied only to the sale of houses, but was expanded to cover condo sales in January 2011.

“Because he didn’t have his own broker to advise him, when he negotiated the final price, it’s most likely the price he agreed to pay” was more than he would have otherwise, said **Bailey’s** law colleague **John Desiderio**.

Platinum said it did present the disclosure form to Wilkenfeld in October 2011 but he refused to sign it — which his suit denies.

Platinum’s lawyer, [REDACTED], a partner with **SNR Denton** which also is the escrow holder for Wilkenfeld’s deposit, did not respond yesterday to detailed requests for comment. Platinum officials didn’t respond to a request for comment submitted through their publicist.