

C-2  
CIA 9-9-86

IN THE SUPREME COURT OF FLORIDA

HARRY HORN and  
SALA HORN, his wife,  
  
Petitioners,

vs.

SHELDON GREENE & ASSOCIATES, INC.,  
a Florida corporation, and  
LITWIN REALTY, INC.,  
a Florida corporation,

Respondents.

CASE NO. 67,843

**FILED**  
SID J. WHITE

APR 28 1986

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

REVIEW OF THE THIRD DISTRICT COURT OF APPEAL OF FLORIDA

**PETITIONERS' INITIAL BRIEF ON THE MERITS**

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## STATEMENT OF THE CASE AND OF THE FACTS

Harry Horn (hereinafter referred to as "Mr. Horn") and Sala Horn, his wife (hereinafter referred to as "Mrs. Horn"), have petitioned the Supreme Court of Florida for review of Sheldon Greene & Associates v. Rosinda Investments, N.V., 475 So. 2d 925 (Fla. 3d DCA 1985). The supreme court has accepted jurisdiction pursuant to article V, section 3(b)(3), of the Florida Constitution, and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv).

Mr. and Mrs. Horn, along with Rosinda Investments, N.V. (hereinafter referred to as "Rosinda"), were the defendants in a suit to recover a real estate brokerage commission. Sheldon Greene & Associates (hereinafter referred to as "Greene") and Litwin Realty, Inc. (hereinafter referred to as "Litwin"), were the plaintiffs. The trial court, sitting as the finder of fact, ruled in favor of Mr. and Mrs. Horn and Rosinda. Greene and Litwin appealed. The court of appeal reversed the judgment and remanded the action to the trial court with directions to enter judgment for Greene and Litwin. Rosinda has not petitioned for review.

At the trial, there were two basic versions of the events leading up to this dispute--that presented by Mr. and Mrs. Horn, and that presented by Greene and Litwin. Mr. and Mrs. Horn testified as follows: Fleeing the violence of the South Bronx, Mr. and Mrs. Horn arrived in Southeast Florida in November 1980. Mr. and Mrs. Horn had been in both the clothing and real estate businesses in New York, and were interested in purchasing a hotel in the South Beach area of Miami Beach. They had \$200,000

to invest. (Transcript at 249-250, 273-77, 321-23)

While sitting in the lobby of a Holiday Inn in Hollywood, Mr. and Mrs. Horn saw Litwin's office and, upon entering, were introduced to a Mr. Pollock. During November 1980, Mr. Pollock showed Mr. and Mrs. Horn three hotels, the Enchanted Isle, the Lombardy and the Nassau. The Horns were not interested in the Lombardy, and attempts to buy the Enchanted Isle and the Nassau proved unsuccessful. (Transcript at 250-52, 254-56, 277-86, 291-97, 312-18, 323-26, 333-39, 341-45)

During November 1980, the period in which Mr. Pollack was showing Mr. and Mrs. Horn the three hotels, Mr. and Mrs. Horn also visited other real estate brokers including, on November 25, one located in the Greystone Hotel. One of the properties being offered by the real estate broker located in the Greystone, a Mr. Schron, was the Greystone itself, which was owned by two rabbis from New York. Mr. and Mrs. Horn were interested. Rabbi Nachem, one of the owners, was contacted by telephone, and negotiations began. During the course of the negotiations, Rabbi Nachem and Mr. Schron told Mr. and Mrs. Horn to be on the lookout for other properties in which the rabbis and Mr. Schron might take an interest. Around the middle of December 1980, Rabbi Nachem came to Southeast Florida to meet with Mr. and Mrs. Horn concerning the purchase of the Greystone. An agreement was reached. Mr. and Mrs. Horn returned to New York, closed out their affairs, and traveled to Israel. On February 18, 1981, Mr. and Mrs. Horn returned to Southeast Florida, and closed

on the Greystone. The purchase of the Greystone consumed the \$200,000 Mr. and Mrs. Horn had to invest. (Transcript at 256-58, 261, 286-91, 328-331)

About one month after Mr. and Mrs. Horn purchased the Greystone, its manager, whose wife was pregnant, resigned to return with her to Puerto Rico, so that they could be with his wife's mother when the baby was born. Jose "Pepe" Quinteros (hereinafter referred to as "Pepe") was at the time going from hotel to hotel seeking employment. When Pepe arrived at the Greystone, Mr. and Mrs. Horn informed him that they were looking for a manager. Pepe informed Mr. and Mrs. Horn that he had previously worked at the San Juan Hotel for twenty-two years. Mr. and Mrs. Horn asked Pepe for a reference and were given the name of the San Juan's manager, Sadru Esmail (hereinafter referred to as "Mr. Esmail"). (Transcript at 258-60, 330-31, 339-41)

Mr. and Mrs. Horn contacted Mr. Esmail. After discussing the qualifications of Pepe, who was hired, the conversation turned to the hotel business in general. Remembering Rabbi Nachem and Mr. Schron, Mr. and Mrs. Horn asked Mr. Esmail if he knew of any hotels on the market. Mr. Esmail informed Mr. and Mrs. Horn that the Champlain and the Prince Arthur, two hotels owned by the same owner as the San Juan, were on the market. Mr. and Mrs. Horn looked at the Champlain and found what they considered to be a very low class of clientele. The Prince Arthur was another story. Rabbi Nachem was contacted, came to Southeast Florida, and inspected and negotiated the purchase











































