SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 17

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ALEXANDER KASPAR,

Plaintiff,

INDEX NO.: 653172/2013

-against-

Motion Seq. No.: 001

DOUGLAS ELLIMAN, LLC, RICHARD "RICK" DANA, GARY DANA, and ADAM KRAMER,

DECISION & ORDER

Defendants.

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HON. SHLOMO S. HAGLER, J.S.C.:

Defendants Douglas Elliman, LLC ("DE"), Richard "Rick" Dana ("Rick"), Gary Dana ("Gary") and Adam Kramer ("Adam") (collectively, the "defendants") move for summary judgment pursuant to CPLR 3212 dismissing plaintiff's complaint. Plaintiff opposes the motion.

Background

Plaintiff, a licensed New York State real estate broker, entered into a letter agreement with defendant DE, dated February 11, 2011 (the "Agreement") (Notice of Motion, Exhibit "D"). The Agreement provides in pertinent part that (i) plaintiff shall devote best efforts as a salesperson or associate broker in DE's brokerage department, and will not engage in any real estate brokerage business except on behalf of DE; (ii) the sole compensation for services rendered by plaintiff to DE shall be commissions in accordance with the then current DE commission schedule; (iii) plaintiff is to be treated as an independent contractor and not as an employee; (iv) plaintiff may engage in outside employment provided that such employment does not involve any real estate brokerage or management activities; and (v) plaintiff's employment with DE may be terminated by either plaintiff or DE at any time by written notice (Notice of Motion, Exhibit "D" at ¶¶1, 2, 3, 4[d], 6).

The Agreement also provides that listings, together with certain information pertaining to or in connection with said listings, are deemed confidential and proprietary to DE (Notice of Motion, Exhibit "D" at ¶9). Plaintiff was assigned to work in 'The Dana Commercial Group' of DE (the "Dana Group").

Plaintiff alleges in his Verified Complaint that on or about April 11, 2011, in his capacity as associate broker for DE, he met with Joseph A. Tahl ("Tahl"), president of Tahl-Propp Equities, LLC ("TPE")[1] regarding leasing of premises known as 520-522 Broadway and 524-528 Broadway (Notice of Motion, Exhibit "A" [Verified Complaint at ¶11]). In his role as a broker working with the Dana Group, plaintiff allegedly informed Tahl that Michael Kors Holdings Limited, or a subsidiary thereof ("Kors") was "actively looking for retail space in the Soho neighborhood of New York City" (Notice of Motion, Exhibit "A" [Verified Complaint at ¶12]; Plaintiff's Deposition at 44). Tahl in turn allegedly confirmed to plaintiff that Rodney M. Propp ("Propp"), cofounder and chairman of TPE, was interested in having Kors as a tenant at the 'Premises'[2] (Notice of Motion, Exhibit "A" [Verified Complaint at ¶¶12-14]). Defendants submit a letter, dated August 10, 2011, from John D. Idol of Kors to Propp expressing an interest by Kors in "524", and an email, dated April 12, 2011, from Tahl to plaintiff stating that Propp of TPE would be interested in speaking with a tenant such as Kors [Notice of Motion, Exhibits "J" and "I"]. Plaintiff claims that in July 2011, he conveyed Propp's request to Gary that DE secure a letter of

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[1]Plaintiff testified at his deposition that he has known Tahl since 2000 as an acquaintance. Plaintiff occasionally introduced him to real estate opportunities but had never earned a commission from any transactions involving Tahl (Plaintiff's Deposition at 31-32, 34-39).

[2]The Verified Complaint defines 'Premises' as including both 520-522 Broadway ("520") and 524-528 Broadway ("524"). In the record, the subject premises are referred to as "520" or "524".

interest regarding the premises from Kors. Plaintiff allegedly made this request of Gary a second time (Notice of Motion, Exhibit "A" [Verified Complaint at ¶¶21-23]). By email, dated July 5, 2011, from Petitt of Kors to Gary, Petitt informed Gary that Kors would not pursue the "Club Monaco" store but would still be interested in the Aritzia location[3] (Notice of Motion, Exhibit "M").

Plaintiff alleges that on or about August 25, 2011, defendant DE, through Rick and Gary, sought to terminate plaintiff as an associate broker with DE. Plaintiff also contends that defendants "effectively" terminated him "as an associate broker by terminating his elliman.com email account; removing him from Elliman LLC premises; and terminating his association with Elliman LLC on eAccessNY"[4] (Notice of Motion, Exhibit "A" [Verified Complaint at ¶¶27-29]). Plaintiff claims he was also notified by telephone on August 22, 2011 and was told that "it didn't work out." Plaintiff avers that he only learned at his deposition that he was terminated because of postings he made on the website "Property Shark" (Affidavit in Opposition at ¶13). In December 2012, Kors entered into a lease agreement for "520" for an annual rental exceeding $4.2 million (the "Lease").

The basis of the relief being sought by plaintiff herein is that while acting within his scope of engagement as an associate broker for DE, he and not Rick, Gary or Adam was responsible for introducing Kors to the "premises", and the "premises" to Kors, and for "setting in motion the

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[3]"520" and "524" are often referred to by the names of the tenants at the time Kors showed interest in leasing the subject properties, namely Club Monaco and Aritzia, respectively.

[4]It is undisputed that defendants failed to provide plaintiff with written notice of his termination in accordance with the Agreement.

transaction that culminated in the execution of the Lease" (Notice of Motion, Exhibit "A" [Verified Complaint at ¶¶34, 37]). Accordingly, plaintiff seeks *inter alia* sixty per cent of the commission realized by DE upon execution of the Lease in December 2012.

In support of their motion for summary judgment, defendants submit an affidavit of Gary, sworn to on October 30, 2014. Gary attests that in August 2011, he terminated plaintiff upon his discovery that plaintiff had posted exclusive DE listings in his own name on the website "Property Shark"[5] (Affidavit in Support at ¶4). Gary contends that plaintiff's claim for a commission is based solely on his meetings in April 2011 with Tahl, and preliminary negotiations regarding the commercial space located at "524" but that the Lease ultimately entered into by Kors in December 2012 related to "520".

Gary further avers that in or about April 2012, "almost [one] year after [plaintiff's] termination", Adam discovered that "520" was listed as available. As a result, Gary contacted a representative of Kors who expressed interest (Affidavit of Support at ¶10). In May 2012, DE obtained a letter of intent from Kors regarding "520" (Affidavit in Support at ¶11). On June 11, 2012, TPE signed a brokerage agreement with 520 Broadway Company, L.P. regarding the leasing of "520" (Affidavit in Support at ¶11; Notice of Motion, Exhibit " L"). In or about September 2012, Kors once again expressed an interest in "520". A Lease was signed for "520" in or about December 2012, and "in January 2013, DE received a brokerage commission of $1,021,453 for procuring the Michael Kors lease at 520 Broadway" (Affidavit in Support at ¶14). Gary avers that plaintiff "had no part in any of the negotiations for [the] 520 Broadway lease having been

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[5]In his affidavit in opposition, plaintiff does not deny that he had an account and made lisitngs on 'Property Shark' but denies that he was informed that such activity was the reason for his termination (Affidavit of Plaintiff in Opposition at ¶14).

terminated for cause in August 2011 over a year before negotiations began" (Affidavit in Support at ¶15). Plaintiff acknowledges in his deposition testimony that a lease transaction was entered into approximately one year after he 'left' DE (Deposition Transcript at 56).

Defendants argue that the Agreement permits termination by either party at any time, and although plaintiff did not receive written notice of termination, plaintiff acknowledges receiving oral notification, and admits in his Verified Complaint that he was "effectively terminated." (Affirmation in Support at ¶7). Further, with respect to any claim by plaintiff for a commission, defendants contend that plaintiff at most introduced "524" as a possible lease prospect to Kors but that the premises actually leased over one year after plaintiff's termination was "520" (Affirmation in Support at ¶16; Affirmation in Reply at ¶6). In any event, defendants argue that a mere introduction by a real estate broker provides no basis to a claim for a brokerage commission (Memorandum of Law in Support at 2-3; Affirmation in Support at ¶28; Affirmation in Reply at ¶6).

In opposition, plaintiff proffers his affidavit, sworn to on January 12, 2015. Plaintiff avers that he has known Tahl for fifteen years, and has had prior business transactions with him.[6] Plaintiff contends that although "520" and "524" are different buildings, they are owned by the same landlord [TPE] and plaintiff has "known them to be identifiably interchangeable" (Affidavit in Opposition at ¶¶6, 7). Plaintiff states that he had discussions with Propp in May, June and July of 2011, and that on or about July 22, 2011, Propp asked him to secure an "expression of interest"

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[6]Plaintiff argues that Gary's statement in his affidavit that the Dana Group had previously worked with TPE is contradicted by an email, dated August 10, 2011, from Gary to Adam stating "we don't know this landlord" (Affidavit in Opposition at ¶5; Affidavit in Opposition, Exhibit "1").

by Kors in the space. Accordingly, plaintiff contends that "only because of [his] relationship with TPE did Kors (and defendants) even know of the possibility of securing space in 520/524 in the future and of putting Kors 'on the map' with TPE" (Affidavit in Opposition at ¶10). Plaintiff states that unbeknownst to him, Gary sent a letter of interest and preliminary offer dated August 11, 2011 to TPE on Kors' behalf (Affidavit in Opposition at ¶11; Affidavit in Opposition, Exhibit "3"). Said letter specifically covers the "524 Broadway - NEC of Spring Street" location (Affidavit in Opposition at ¶11, Exhibit "3").

Plaintiff claims that his termination "was planned by defendants once they gained access to TPE, a landlord defendants 'don't know;' and it was done to 'steal' the contract claim [he] was to realize on account of introducing Kors and the defendants, to TPE and being instrumental and a proximate link to the Lease that was ultimately signed between Kors and TPE" (Affidavit in Opposition at ¶16).[7] Plaintiff acknowledges in his Affidavit that Kors "signed a lease for 520 in December 2012, and in January 2013, defendants received a commission check of $1,021,453" (Affidavit in Opposition at ¶17).

In his opposition, plaintiff attempts to couch the relief he is seeking as limited to claims for breach of contract and fraud, rather than a claim for a brokerage commission (Affirmation in Opposition at ¶15; Transcript of Oral Argument at 11-12). Plaintiff claims that "because defendants failed to pay [him] the compensation called for under the [Agreement], he suffered damage" (Memorandum of Law in Opposition at 3).

The Verified Complaint asserts causes of action against defendants for a declaratory

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[7]Plaintiff claims that defendants' "assertion that cause existed were devised well after [his] firing and only after [he] commenced this lawsuit (Affidavit in Opposition at ¶13]

judgment (first cause of action), breach of contract (second cause of action), unjust enrichment (third cause of action), conversion (fourth cause of action), an accounting (fifth cause of action), breach of the covenant of good faith and fair dealing (sixth cause of action), conspiracy to commit a wrongful act (seventh cause of action), fraud (eighth cause of action), punitive damages (ninth and tenth causes of action) (Notice of Motion, Exhibit "A" [Verified Complaint]).

Discussion

Summary Judgment

The movant has the initial burden of proving entitlement to summary judgment. (*Winegrad v New York Univ. Medical Ctr.*, 64 NY2d 851 [1985].) Once the movant has provided such proof, in order to defend the summary judgment motion the opposing party must "show facts sufficient to require a trial of any issue of fact." (CPLR § 3212[b]; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]; *Friends of Animals v. Associated Fur Mfrs.*, 46 NY2d 1065, 1067 [1979]; *Freedman v Chemical Construction Corp.*, 43 NY2d 260, 264 [1977]; *Spearmon v. Times Square Stores Corp.*, 96 AD2d 552, 552 [2d Dept. 1983].) "It is incumbent upon a [litigant] who opposes a motion for summary judgment to assemble, lay bare and reveal [his, her, or its] proof, in order to show that the matters set up in [the complaint] are real and are capable of being established upon a trial." (*Spearmon*, 96 AD2d at 553 [quoting *Di Sabato v. Soffes*, 9 AD2d 297, 301 (1st Dept. 1959)].) If the opposing party fails to submit evidentiary facts to controvert the facts set forth in the movant's papers, the movant's facts may be deemed admitted and summary judgment granted since no triable issue of fact exists. (*Kuehne & Nagel v. Baiden*, 36 NY2d 539, 543-544 [1975].)

Second Cause of Action for Breach of Contract

The Verified Complaint alleges that in accordance with the Agreement, DE failed to pay

plaintiff an amount equal to no less than sixty percent of the commission realized by DE "on account of execution of the Lease on the Kors Rental Space" (Notice of Motion, Exhibit "A" [Verified Complaint at ¶¶45-48]). The Agreement defines the rights and responsibilities of the parties. The only clause in the Agreement relating to compensation provides

> "Compensation. As sole compensation for services rendered to DE, you will be paid commissions in accordance with the then current DE commission schedule, which may be revised from time to time at the sole discretion of DE. You will not receive any remuneration related to the number of hours you work or be treated for any purpose as an employee of DE."

Defendants argue that plaintiff is not entitled to any commission for the Lease of "520" because plaintiff at most introduced "524" to Kors, and in any event was not the "procuring cause of the lease" (Affirmation in Support at ¶8; Memorandum of Law in Support at 2). Defendants argue that plaintiff was not at all involved in the Lease negotiations for "520" which occurred between July and December 2012, having been terminated for cause in August 2011. In opposition, plaintiff argues that he "brought the parties together and instigated the relationship which eventually culminated in the execution of a lease" (Memorandum of Law in Opposition at 4).

Courts have cited as a general rule that in the absence of an agreement to the contrary, "[a] real estate broker is entitled to a brokerage commission where it is established that the broker was the procuring cause of the sale by producing a purchaser who is ready, willing, and able to buy on terms acceptable to the seller" (*Lane--Real Estate Dept. Store v Lawlet Corp.*, 28 NY2d 36, 42 [1971]. *See SPRE Realty, Ltd. v Dienst*, 119 AD3d 93, 97 [1st Dept. 2014]). "A broker does not earn a commission merely by calling the property to the attention of the buyer. But this does not mean that the broker must have been the dominant force in the conduct of the ensuing negotiations

or in the completion of the sale. Rather, the broker must be the procuring cause of the transaction, meaning that there must be a direct and proximate link, as distinguished from one that is indirect and remote between the introduction by the broker and the consummation of the transaction" (*SPRE Realty, Ltd. v Dienst*, 119 AD3d 93, 97-98 [1st Dept. 2014] [internal quotation marks and citations omitted]). "This standard requires something beyond a broker's mere creation of an amicable atmosphere or an amicable frame of mind that might have led to the ultimate transaction. At the same time, a broker need not negotiate the transaction's final terms or be present at the closing" (*Id* at 99; *See Rosenhaus Real Estate, LLC v S.A.C. Capital Mgt., Inc.*, 121 AD3d 409, 409 [1st Dept. 2014]).

Here, defendants have established their *prima facie* entitlement to judgment as a matter of law and defendants have failed to raise an issue of fact in opposition. As evidence that prior to his termination, plaintiff only played an role with respect to "524" and not "520", the record reveals (i) a letter, dated August 10, 2011 from John D. Idol of Kors expressing interest in "524 Broadway" (Notice of Motion, Exhibit "J"); (i) an email dated April 12, 2011, from Tahl to plaintiff regarding TPE's interest in Kors which references "524 Broadway" in the "re" line (Notice of Motion, Exhibit "I"); (iii) an email from Gary to Adam, dated August 10, 2011, with the re line 'Aritzia Photo' and discussing the letter Idol sent to Propp (Affidavit in Opposition, Exhibit "5"); (iv) 'letter of interest and preliminary offer', dated August 11, 2011, from Gary to Propp stating Kors' interest in premises located at "524 Broadway-NEC of Spring Street" (Affidavit in Opposition, Exhibit "3"); and (v) an email, dated October 12, 2011, from Tom Petitt of Kors to Gary stating "we are going to pass on the 524 Broadway space (Notice of Motion, Exhibit "K").

In order to show that he was the procuring cause of the Lease transaction entered into

between TPE and Kors in December 2012 for "520", the Verified Complaint defines both 520 Broadway and 524 Broadway collectively as "524". Further plaintiff testified at his deposition that "524" referred to the 'whole building' or the 'whole corner block' (Deposition at 49). Plaintiff's testimony was vague and conclusory and is belied by the submitted documentary evidence. The submitted evidence relating to negotiations pertaining to "520"entered into subsequent to plaintiff's termination includes a broker's agreement between Propp on behalf of 520 Broadway Company, L.P. and Kors, dated June 11, 2012, with respect to a "520" Lease, an email from Gary to Propp, dated September 7, 2012, stating that Kors now wants to "move forward with a deal for the Club Monaco [520] space, and a responsive email, dated that date from Propp stating that "nothing has been signed" (indicating that "520" was still available) (Notice of Motion, Exhibits "L" and "N").

However, even if the Court were to deem plaintiff's involvement prior to his termination as pertaining to "520", the record fails to sufficiently allege facts demonstrating that plaintiff was the procuring cause of the Lease entered into between Kors and TPE for "520". The case at bar does not rise to the level of the facts in *SPRE Realty, Ltd. v Dienst*, *supra*. In that case, a broker introduced the husband and wife defendants to a condominium building under construction ("the Building"), brought them to the developer's office to view the layout and renderings of the Building and to a home to view an example of the developer's work, and negotiated with the developer on the defendants' behalf for a duplex condominium at the Building. Based on those negotiations, the broker sent a deal sheet to the developer for the purchase of two units at the Building. Soon thereafter, attorneys for the defendants and the developer exchanged and reviewed a contract of sale for the two units which, according to the broker, contained the same material

terms as the deal sheet it had prepared. The defendants, however, pulled out of the deal, claiming they had changed their minds and were no longer in the market for a new home.

The broker contacted the defendants a few months after this deal fell through to inquire whether they had any renewed interest in purchasing a home but the defendants reiterated that they were no longer seeking to purchase a residence and had no continued interest in the Building.[8] However, approximately eighteen (18) months after the first deal fell through, the defendants purchased a duplex at the same Building but consisting of two units different from the ones for which they had previously contracted. The broker sued the defendants claiming that it was entitled to a brokerage commission on the sale and alleging that the defendants deliberately had concealed their intention to purchase the condo units at the Building in order to avoid paying the broker its commission.

Defendants moved to dismiss pursuant to CPLR § 3211(a) claiming that they never signed the deal sheet or contract of sale for the first duplex units and that the broker was not involved in the ultimate sale of the units. The defendants' motion to dismiss was denied by the Supreme Court and the Appellate Division affirmed. The appellate court held that the factual allegations by the broker were sufficient to establish that it was the "direct and proximate link" between the introduction of the defendants to the developer and the defendants' eventual purchase of the second duplex at the Building.

Here, however, the record shows that plaintiff's involvement was limited to (i) an initial meeting with Tahl in April 2011 as evidenced by the April 12, 2011 email; (ii) plaintiff's affidavit

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[8]The broker also continued to seek a commercial property for the defendant wife's planned business.

statements that he continued to have discussions with Propp and that on or about July 22, 2011, Propp asked plaintiff to secure an expression of interest by Kors for 520/524; and (iii) an email dated July 1, 2011 from plaintiff to Gary."[9] Plaintiff's deposition testimony is vague and conclusory with respect to his involvement in any negotiations and as to which of the premises was the subject of any such negotiations (Deposition transcript at 58-69) (*See Helmsley-Spear, Inc. v 150 Broadway N.Y. Assoc.*, 251 AD2d 185, 186 [1st Dept. 1998] ["plaintiff...had merely introduced defendant prospective tenants to the premises, made inquiries about the amount and configuration of space available for lease there, and repeated a request of the prospective tenant for architectural plans"].

Plaintiff was terminated for cause in August 2011, and there is no evidence in the record, including plaintiff's own testimony, that he took any more steps with respect to the ultimate Lease covering "520" which was signed in December 2012. *See Jagarnauth v. Massey Knakal Realty Servs., Inc.*, 104 AD3d 564 [1st Dept. 2013]. Further, there is no contrary term in the Agreement to suggest that New York case law with respect to the recovery of brokerage commissions would not apply to the instant matter. Accordingly, that branch of the defendants' motion for summary judgment dismissing the complaint as to the second cause of action for breach of contract is granted.

Sixth Cause of Action for Breach of the Covenant of Good Faith and Fair Dealing

Plaintiff alleges that the termination of his employ by DE was made in bad faith and for the

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[9]The email states " 'Club Monaco' space available first, corner available in 3 years. Am getting floor plans but have space details. Will show you next week. When are you back in the office?" It is not clear what floor plans plaintiff is referring to. In any event, there is no other evidence that plaintiff obtained floor plans or engaged in any negotiations with respect to "520" (Affidavit in Opposition, Exhibit "2").

sole purpose of 'stealing' from him a significant commission upon the execution of a lease by Kors of the subject TPE "premises". Even if the broker "is unable to prove that it was the procuring cause of the defendants' purchase, it may be able to prove that the defendants terminated its activities 'in bad faith and as a mere device to escape the payment of the commission'" (*SPRE Realty, Ltd. v Dienst*, *supra* at 100) [internal citations omitted]). As such, the remaining issue is whether or not plaintiff was terminated in bad faith to avoid defendants' payment to him of a share of the commission earned on the Kors leasehold transaction for "520". In the instant case, there is sufficient evidence, admitted to by plaintiff, that he was terminated for cause, namely that plaintiff posted certain DE exclusive listings on Property Shark. Accordingly, that branch of defendants' motion to dismiss plaintiff's sixth cause of action for breach of the covenant of good faith and fair dealing is granted.

Third Cause of Action for Unjust Enrichment, Fourth Cause of Action for Conversion and Fifth Cause of Action for an Accounting

Given the Court's dismissal of plaintiff's breach of contract action as discussed above, those branches of defendants' motion for summary judgment dismissing plaintiff's third cause of action for unjust enrichment, fourth cause of action for conversion, and fifth cause of action for an accounting, all of which are premised on defendants' alleged wrongful failure to pay plaintiff a brokerage commission for the Lease of "520" to Kors, are likewise granted.

First Cause of Action for a Declaratory Judgment

Plaintiff alleges he is entitled to a declaration that DE breached its contractual obligation to properly terminate his engagement pursuant to the Agreement. "A declaratory judgment action is generally appropriate only where a conventional form of remedy is not available. Where alternative conventional forms of remedy are available, resort to a formal action is generally

unnecessary and should not be encouraged" (*Bartley v Walentas*, 78 AD2d 379, 381-382 [1st Dept. 1980]). Here, plaintiff has had sufficient recourse to make this claim in his other causes of action. Accordingly, that branch of defendants' motion for summary judgment dismissing plaintiff's first cause of action for a declaratory judgment is granted.

Seventh Cause of Action for Conspiracy to Commit a Wrongful Act

Plaintiff alleges that defendants acted in concert to cause injury to plaintiff and to 'steal' from him a significant commission upon the execution of a lease by Kors of the "Kors Rental Space". "New York does not recognize civil conspiracy to commit a tort as an independent cause of action" (*Steier v Shreiber*, 25 AD3d 519, 522 [1st Dept. 2006]). Accordingly, that branch of defendants' motion for summary judgment dismissing plaintiff's seventh cause of action for conspiracy to commit a wrongful act is granted.

Eighth Cause of Action for Fraud

Plaintiff alleges that defendants perpetrated a fraud upon plaintiff by terminating his engagement with DE and stealing the commission plaintiff was to realize on account of introducing Kors to "524/TPE/Mr. Propp." "(N)o cause of action for fraud is stated or exists where the only fraud charged relates to the breach of the employment contract" (*Dalton v Union Bank of Switzerland*, 134 AD2d 174, 176 [1st Dept. 1987]). Where, as here, the alleged fraud "is based on the same facts that underlie the contract [claim]... and does not call for damages that would not be recoverable under a contract theory," then the cause of action is properly dismissed (*Laurel Hill Advisory Group, LLC v American Stock Transfer & Trust Co., LLC*, 112 AD3d 486, 487 [1st Dept. 2013]). *See J.E. Morgan Knitting Mills v Reeves Bros.*, 243 AD2d 422, 423 [1st Dept. 1997]. Accordingly, that branch of defendants' motion to dismiss plaintiff's eighth cause of action for

fraud is granted.

Ninth and Tenth Causes of Action for Punitive Damages

The ninth cause of action prays for punitive damages based on the malice and willfulness of the fraud alleged against defendants in the eighth cause of action. Inasmuch as the eighth cause of action for fraud is dismissed herein, the ninth cause of action is dismissed as moot. Similarly, the tenth cause of action asks for punitive damages for the malice and willfulness of defendants "acting in concert or combination to cause injury to [plaintiff] and to 'steal'" from him a commission. Clearly this tenth cause of action is based on the allegations of the seventh cause of action for conspiracy, which this court has dismissed herein. Therefore, the tenth cause of action is likewise dismissed as moot.

Conclusion

Accordingly, it is

ORDERED, that the defendants' motion for summary judgment is granted and the Verified Complaint is dismissed; and it is further

ORDERED, that the Clerk is directed to enter judgment accordingly.

Dated: July 12, 2016

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