SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DAKOTA D. RAMSEUR** **PART** **34M**

Justice

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INDEX NO. 154475/2022

PIETRO LEMBO,

MOTION DATE 07/27/2022

Plaintiff,

MOTION SEQ. NO. 002

- v -

CHARLES H. GREENTHAL MANAGEMENT CORP., STEPHEN GREENSPAN, DESI NDREU, JONATHAN WEST, 110 EAST 36TH ST. REALTY CORP., HOWARD ALALOUF, LARISA BORDANOVA SHAER, COMPASS, INC.,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 9, 10, 11, 12, 14, 25 were read on this motion to/for DISMISS.

Plaintiff, Pietro Lembo (plaintiff), *pro se*, commenced this action against defendants Charles H. Greenthal Management Corp. (Greenthal), Stephen Greenspan, Desi Ndreu, Jonathan West, 110 East 36th St. Realty Corp. (110 Coop), and Howard Alalouf (collectively, the Coop defendants), and Larisa Bordanova Shaer and Compass Inc. d/b/a Compass (collectively the Compass defendants), alleging that the defendants engaged in libel and several acts that interfered with plaintiff's existing business relationships with tenants in the cooperative apartment building located at 110 East 36th Street, New York, New York (Coop), causing him to suffer actual and prospective business losses in the amount of $2,500,000. In motion sequence 001, the Compass defendants now move to dismiss the complaint pursuant to CPLR 3211(a)(5) and (7). In motion sequence 002, the Coop defendants move to dismiss pursuant to CPLR 3211(1) and (7). Both motions are opposed. For the reasons stated below, the Compass defendants' motion is granted, and the Coop defendants' motion is granted in part.

BACKGROUND

Plaintiff is a licensed real estate broker who handled numerous transactions on behalf of various shareholders at 110 Coop for over 20 years (NYSCEF doc. no. 5, ¶¶ 3, 16, 57). According to plaintiff, he was the exclusive broker for the Zirinsky Group, the sponsor for the building, and many other shareholders (NYSCEF doc. no. 5, ¶ 16). Plaintiff asserts that the agreement with the Zirinsky Group was oral, but its existence was evidenced by the seven sale and rental transactions he had brokered for the Zirinsky Group between 2005 and 2019 (NYSCEF doc. no. 16, ¶ 11; doc. no. 19). Plaintiff alleges that in May 2019, defendant Greenthal, the building's property management company, interfered with plaintiff's agreement with the Zirinsky Group when Greenthal employees insisted that a transfer of unsold shares from one Zirinsky Group sponsor unit to another required board approval (NYSCEF doc. no. 5, ¶¶ 17-28). Plaintiff informed

Greenspan, a Greenthal employee, that under the terms of the proprietary lease, sponsor units had special status and were exempt from sublet and board application fees and transfers for those units did not require board approval (NYSCEF doc. no. 5, ¶ 17-18). According to plaintiff, Greenthal continued to disregard the special status afforded to these units and imposed onerous requirements in order to process the transfer, which led to a verbal altercation between plaintiff and a Greenthal employee named Peggy Garcia (NYSCEF doc. no. 5, ¶¶ 20, 23-24). On August 26, 2019, defendant Alalouf, a board member and shareholder at the Coop, allegedly left a voicemail for plaintiff directing him to apologize to Ms. Garcia or "risk banishment from Greenthal" (NYSCEF doc. no. 5, ¶ 25). Two days later, on August 28, 2019, Greenspan, sent an email to plaintiff stating that plaintiff had been "abusive" to the employee (NYSCEF doc. no. 5, ¶¶ 23-25). Greenspan continued to insist that the tenant transfer needed board approval until board member Alalouf intervened and clarified that board approval was not required (NYSCEF doc. no. 5, ¶¶ 27-28; doc. no. 18). The tenant transfer was subsequently completed (NYSCEF doc. no. 5, ¶ 28). Plaintiff alleges that Alalouf and another board member, Marilyn Philips, were upset that plaintiff alerted the Zirinsky Group of the sponsor unit sublease fee exemption and threatened plaintiff that he would not be able to do business in the building if the Zirinsky Group stopped paying its sublet fees (NYSCEF doc. no. 5, ¶¶ 97-99).

The complaint alleges that Greenthal imposed numerous changes to the board application process throughout 2017-2019, including retaining a third-party processing service called "Boardpackager," which caused delays in the application process and imposed additional application and document review fees (NYSCEF doc. no. 5, ¶¶ 29, 31, 70-76). Plaintiff notified Alalouf and Ndreu, an officer of Greenthal, of the problems with the new service, but those concerns were ignored (NYSCEF doc. no. 5, ¶ 30-31). Plaintiff alleges that Greenthal's decision to use Boardpackager impacted plaintiff's business because he had to notify shareholders of the additional fees (NYSCEF doc. no. 5, ¶ 79-81). In November 2019, plaintiff filed a complaint against Greenthal with the New York Department of State, Licensing Division (DOS) for "failure to properly supervise staff, charging illegal fees, failure to understand agency laws, offering incorrect legal advice, and tie-in arrangements by boardpackager" (NYSCEF doc. no. 5, ¶ 82). Alalouf, who was allegedly upset because the building incurred legal fees in connection with the DOS investigation, told plaintiff that he was banned from conducting business in the building, and made multiple requests that plaintiff withdraw the DOS complaint (NYSCEF doc. no. 5, ¶ 87, 94).

According to plaintiff, the Coop defendants introduced new brokers into the building to replace plaintiff and embarked on a "malicious campaign" that caused him to lose his ongoing relationship with the Zirinsky Group, who began using defendant Shaer as its broker, and his ability to generate new business in the building (NYSCEF doc. no. 5, ¶¶ 33, 36). Plaintiff alleges that defendants successfully pressured the Zirinsky Group to terminate its relationship with plaintiff in August 2020 and sign an exclusive deal with Shaer, by "intentionally and/or negligently commit[ing] acts or omissions designed to disrupt and sabotage the relationship" (NYSCEF doc. no. 5, ¶¶ 61-63, 67). According to plaintiff, the principal representative of the Zirinsky Group said his "hands were tied" when plaintiff inquired why he had terminated their longstanding relationship without notice (NYSCEF doc. no. 5, ¶ 65).

Plaintiff also alleges that the Coop defendants intentionally took steps to stop plaintiff from doing business in the building, telling him that they would simply ignore any board applications

submitted by plaintiff (NYSCEF doc. no. 5, ¶ 90), and then subsequently subjected a sublease application handled by plaintiff to unwarranted and unprecedented scrutiny, which plaintiff alleges violated state anti-discrimination laws (NYSCEF doc. no. 5, ¶¶ 85-92).

Plaintiff asserts that an email sent by Boardpackager to a shareholder that incorrectly stated that there were "deficiencies" with the board application, was defamatory because it had the effect of damaging plaintiff's reputation by making him look unprofessional and incompetent (NYSCEF doc. no. 5, ¶¶ 51-53). Plaintiff attributed these incorrect statements to Greenthal's negligent failure to have a licensed office manager supervising the office (NYSCEF doc. no. 5, ¶¶ 48-49). Likewise, plaintiff alleges that emails sent by Alalouf and Greenthal employees to shareholders whom plaintiff had worked with in the past informing them that Shaer was the "preferred broker" for the building, were defamatory and designed to disrupt his business relationships by making him seem incompetent (NYSCEF doc. no. 5, ¶¶ 115-125). Plaintiff alleges that he was defamed in an email sent on February 4, 2021, by Alalouf and Ms. Garcia to David Harris, a shareholder plaintiff had worked with in the past, encouraging the shareholder to work with Shaer (NYSCEF doc. no. 5, ¶ 115-117), and in an email sent by Ms. Garcia to another of plaintiff's clients wherein Ms. Garcia recommended "a more reputable agent" (NYSCEF doc. no. 5, ¶ 121). Although this client stated her intentions to continue to work with plaintiff, Ms. Garcia nevertheless sent a second email recommending Shaer (NYSCEF doc. no. 5, ¶ 122). There is no indication that any of these emails mentioned or referenced plaintiff. Indeed, in the February 4, 2021, email plaintiff's name does not come up at all (NYSCEF doc. no. 11). Further, the email notes that although the building has a preferred broker, the shareholder is free to engage any broker of his choosing (*id.*). Despite plaintiff's allegations that these emails were intended to disrupt his business in the building, the complaint does not allege that any of the plaintiff's clients to whom Shaer was referred opted not to do business with plaintiff as a result (NYSCEF doc. no. 5, ¶¶ 116-117, 121-122, 123-127; doc. no. 23).

With respect to the Compass defendants, plaintiff alleges that Compass engaged in tortious interference at 110 Coop by contacting the three shareholders that Alalouf and Ms. Garcia had emailed in order to retain them as clients (NYSCEF doc. no. 5, ¶¶ 103-115). The third shareholder, whom plaintiff asserts he "represented [ ] as exclusive broker for the sublet and sale [ ] since 2005" (NYSCEF doc. no. 5, ¶ 123), was introduced to Shaer through a February 27, 2022, email sent by Alalouf after the subtenant submitted notice of his intent to vacate (NYSCEF doc. no. 5, ¶¶ 124-125). On February 28, 2022, Shaer emailed the shareholder with the intent to be hired by him (NYSCEF doc. no. 5, ¶ 126). Plaintiff alleges that Shaer violated NYCRR 175.9 by contacting plaintiff's clients.

The Coop Defendants moved to dismiss pursuant to CPLR 3211(a)(1) and (7), arguing that plaintiff's tortious interference claims were vague and speculative and failed to adequately plead facts establishing the existence of a contract, that the Coop Defendants were aware of the contract, or that they induced a breach through wrongful means (NYSCEF doc. nos. 9-12). According to the Coop defendants, the complaint does not allege that the changes to the application process were implemented to frustrate plaintiff's contracts (NYSCEF doc. no. 12, pp. 6). Nor did the introduction of new brokers to the building have anything to do with plaintiff (*id.* at p. 7). And even if it did, these did not constitute "wrongful acts" because the board and shareholders were

permitted to deal with anyone they wanted; they were not required to utilize plaintiff's services exclusively (*id.*).

To the extent plaintiff alleges that the Coop Defendants defamed him in their communications with tenants and shareholders, the Coop defendants argue that most of those allegations are time-barred by the one-year statute of limitations on defamation claims alleging damage to reputation, that the complaint failed to state a cause of action because it did not specify the alleged defamatory language, the type of language the complaint does describe does not rise to a legally cognizable level of defamation, and that plaintiff did not articulate any harm from the allegedly defamatory statements (NYSCEF doc. no. 12, pp. 9-11). Defendants further argue that even if the complaint sufficiently stated a defamation claim, the Coop defendants nonetheless would be entitled to dismissal based on the defenses of truth and qualified privilege (*id.* at 12-13). The Coop defendants argue that the February 4, 2021 email sent to one of plaintiff's clients (NYSCEF doc. no. 11), was not defamatory because it never mentioned plaintiff, and his being "insulted" that the board would recommend a broker other than him does not amount to defamation (NYSCEF doc. no. 12, p. 11).

The Compass defendants move to dismiss the seventh cause of action pursuant to CPLR 3211 (a)(5) on the ground that some of plaintiff's allegations refer to events that occurred in 2016 that are time-barred by a three-year statute of limitations (NYSCEF doc. no. 7, pp. 12-13), and pursuant to CPLR 3211(a)(7) for failure to state a cause of action for tortious interference with a contract as plaintiff did not establish the existence of an exclusive contract for referrals within 110 Coop, that the Compass defendants were aware of such a contract, that a breach of the alleged contract occurred, or that plaintiff suffered actual damages (NYSCEF doc. no. 7, pp. 6-10). The Compass defendants also assert that plaintiff failed to state a cause of action for tortious interference with prospective business relations as the complaint does not allege that the Compass defendants acted through "wrongful means" with the sole purpose of harming the plaintiff (NYSCEF doc. no. 7, pp. 11-12).

DISCUSSION

Standard to dismiss

On a motion to dismiss a complaint pursuant to CPLR 3211, the court must accept the facts as alleged as true, afford the plaintiff the benefit of every possible inference, determine whether the facts as alleged state a cognizable legal theory (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). Under 3211(a)(1), dismissal is warranted where the documentary evidence conclusively establishes a defense as a matter of law (CPLR 3211[a][1]). For CPLR 3211(a)(7) motions to dismiss for failure to state a cause of action, "the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one" (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]).

Tortious interference with contract

The main thrust of plaintiff's complaint is that the Coop and Compass defendants tortiously interfered with plaintiff's exclusive contract with the Zirinsky Group and other ad hoc tenant

contracts and with future contracts that he would have obtained from other shareholders in the building. Both the Coop and Compass defendants raise statute of limitations defenses. The Coop defendants assert that for the claims sounding in defamation, a one-year statute of limitations period should apply. As the gravamen of plaintiff's complaint is the economic injury suffered from the alleged tortious interference with his business relationships, the applicable statute of limitations period is three years (*Amaranth LLC v J.P. Morgan Chase & Co.*, 71 AD3d 40, 48 [1st Dept 2009]). The Compass defendants assert that to the extent the allegations in plaintiff's seventh cause of action concern alleged tortious interference with a contract that occurred in 2016, those claims are beyond the three-year statute of limitations. The Compass defendants are correct that the 2016 allegations cannot be considered, but the alleged tortious interference with relationships at 110 Coop occurred within the statutory period, therefore plaintiff's claims are not time barred.

In order to sufficiently plead a cause of action for tortious interference with existing contracts, the pleadings must show the existence of a valid contract, the defendant's knowledge of the contract, the defendant's intentional procurement of the third party's breach of the contract without justification, actual breach of the contract, and damages (*Influx Capital, LLC v Pershin*, 186 AD3d 1622, 1624 [2d Dept 2020]).

Here, plaintiff fails to state a claim for tortious interference with an existing contract as he did not sufficiently show that a contract existed between him and the Zirinsky Group or any of the other tenants at the time of the alleged interference. Although plaintiff alleges that his contract with the Zirinsky Group was oral, he had provided no facts to establish the terms of the contract or that it was in effect at the relevant time. The list plaintiff provided in his opposition papers chronicling the prior transactions plaintiff brokered for Zirinsky (NYSCEF doc. no. 19), while useful in showing that plaintiff had a long-standing relationship with the Zirinsky Group, was insufficient to establish the existence of an alleged oral exclusivity contract.

As for the rental agreement with 8B, also provided in plaintiff's opposition (NYSCEF doc. no. 23), that agreement was not signed until March 9, 2022, several days after Shaer emailed the shareholder on February 28, 2022. As such, there was no contract in place at the time of the alleged interference, which is fatal to plaintiff's claim. The emails between plaintiff and the subtenant regarding when he intended to move out (NYSCEF doc. no. 24) is not evidence of an existing contract; at most it showed intent to enter a contract, which is insufficient for a tortious interference with contract claim (*see Avant Graphics Ltd. v United Reprographics, Inc.*, 252 AD2d 462, 463 [1st Dept 1998] [finding that plaintiff failed to state a cause of action for tortious interference where although plaintiff had submitted the lowest bid on a contract, no contract was yet in existence]).

Even if plaintiff were able to demonstrate that he had existing contracts with the Zirinsky Group and the shareholder in 8B, the pleadings still fail as they do not sufficiently allege that any of the defendants were aware of these contracts or their terms, or that there was a breach. Although the Coop defendants may have known that plaintiff had a business relationship with the Zirinsky Group and the other shareholders from plaintiff's brokering of previous deals, that did not imbue them with knowledge that plaintiff had ongoing exclusivity contracts with any shareholder. No facts explain how Shaer and Compass possibly could have been aware of any contract that plaintiff had with a shareholder at the building. The Zirinsky Group's decision to no longer work with

plaintiff is not, on its face, evidence of a breach of contract. Without the terms of the alleged oral contract, plaintiff did not establish that the Zirinsky Group was under a contractual obligation to continue to use plaintiff's services that were breached when it opted to use Shaer as its broker for future contracts (*see Pershin*, 186 AD3d at 1624 [dismissing complaint where plaintiff "failed to identify all of the relevant contracts with third parties, failed to allege facts describing how those contracts were breached by the third parties…"]; *Angeli v Barket*, __ AD3d __, 2022 NY Slip Op. 07213 [2d Dept 2022] ["To succeed on a cause of action to recover damages for tortious interference with contractual relations, a plaintiff must establish, among other things, an actual breach by a third party of the contract that the defendant allegedly interfered with."]). With respect to the other shareholders contacted by Shaer, they opted to remain clients of the plaintiff, thus there was no breach of contract.

Tortious interference with prospective business relations

Plaintiff's other tortious interference claim involves interference with his ability to obtain future deals with shareholders by what plaintiff describes as his "banishment" from the building by the board and Greenthal and its promotion of Shaer to replace him as the go to broker for 110 Coop. Prior to the negative interactions with the Coop defendants beginning in May 2019, plaintiff alleges that he enjoyed a steady stream of clients from the building, which stopped when the defendants colluded to exclude him from the building (NYSCEF doc. no. 16, ¶¶ 47-56).

A claim for tortious interference with future or prospective business relations requires a showing of "more culpable" conduct than a claim for tortious interference with an existing contract (*NBT Bancorp Inc. v Fleet/Norstar Financial Group, Inc.*, 87 NY2d 614, 621 [1996]). To establish a claim for tortious interference with business relations or prospective contracts, a party must allege 1) that it had a business relationship with a third party; 2) that the defendant knew of that relationship and intentionally interfered with it; 3) that the defendant acted solely out of malice or used unlawful or wrongful means that amounted to a crime or independent tort; and 4) that the interference caused injury to the business relationship (*Carvel Corp. v Noonan*, 3 NY3d 182, 190 [2004]; *Amaranth LLC*, 71 AD3d at 47). Unlawful or wrongful means requires "physical violence, fraud or misrepresentation, civil suits and criminal prosecutions, and some degrees of economic pressure; they do not, however, include persuasion alone although it is knowingly directed at interference with the contract" (*Guard-Life Corp. v Parker Hardware Mfg. Corp.*, 50 NY2d 183, 191 [1980]). The claim must demonstrate that the plaintiff "would have received a contract but for the malicious, fraudulent, and deceitful acts of a third party," (*Williamson, Pickett, Gross, Inc. v 400 Park Ave. Co.*, 63 AD2d 880, 880 [1st Dept 1978]), and show that there was no proper purpose for the potential contractual party's refusal to enter into the agreement (*Ivan Mogull Music Corp. v Madison-59th Street Corp.*, 162 AD2d 336, 337 [1st Dept 1990]).

Compass defendants

The pleadings fail to establish any of these elements with respect to the Compass defendants and the claims against them in the third and seventh causes of actions for tortious interference are dismissed. There is nothing to establish that Shaer or Compass knew the extent of plaintiff's business relationships in the building, and even if they did, there is no evidence that they intentionally interfered with those relationships through malicious or wrongful means.

Plaintiff alleges that the Compass defendants engaged in wrongful acts by contacting plaintiff's clients in violation of 19 NYCRR § 175.9, which prohibits a real estate broker from inducing "any party to a contract of sale or lease to break such contract for the purpose of substituting in lieu thereof a new contract with another principal," and that Compass' failure to supervise its staff to prevent regulatory violations caused the alleged interference with plaintiff's client relationships. As the complaint did not establish that plaintiff had an agreement with any of the shareholders at the time that Shaer contacted them, there was no violation of 19 NYCRR § 175.9 (*see Patridge v Lemonzo*, 37 AD2d 180, 182 [2d Dept 1971]).

Furthermore, as a competitor broker, Shaer and Compass had independent reasons to try to forge relationships with shareholders and obtain them as clients. Where there is a proper purpose for the defendant's actions, such as a self-serving economic motive, that will defeat a claim for tortious interference with business relationships (*Carvel Corp.*, 3 NY3d at 191; *Foster v Churchill*, 87 NY2d 744, 750 [1996] ["economic interest is a defense to an action for tortious interference with a contract unless there is a showing of malice or illegality"]).

Coop defendants

The allegations also do not establish that the Coop defendants acted through wrongful means. The complaint asserts several alleged wrongful acts or independent torts, including defendant West's negligent failure to comply with real estate broker licensing regulations and failure to supervise staff and take corrective action in violation of those regulations (first cause of action), Greenthal's negligent failure to employ a qualified office manager to ensure that staff were knowledgeable of relevant policies and regulations (third cause of action), defendant Ndreu's imposition of unnecessary screening requirements for a non-citizen sublease applicant in violation of anti-discrimination laws in his capacity as an officer of Greenthal (fifth cause of action), collusion with Compass defendants to induce breach of contract (seventh cause of action), disclosure of allegedly confidential shareholder information that constituted unfair trade practices and misappropriation of trade secrets (ninth cause of action), and that statements made by certain Coop defendants defamed plaintiff (second, seventh, eighth, and ninth causes of action).

RPL § 441-c and 19 NYCRR § 175.20

The first cause of action fails to state a claim that defendants West and Greenthal failed to supervise unlicensed employees operating under their license as required by Real Property Law § 441-a and 19 NYCRR § 175.20. Section 441-c of the RPL provides for revocation or suspension of a broker's license or the imposition of fees where it has been determined that a licensed broker "demonstrated untrustworthiness or incompetency" (RPL § 441-c[a][1]). While the Coop defendants' motion asserts that Greenthal, acting in its capacity as property manager to run the day-to-day operations for 110 Coop, is not a real estate broker within the meaning of RPL 440 (NYSCEF doc. no. 12, pp. 16-17), whether a party's services come within that statute is a question of fact (*Zedeck v Derfner Mgmt. Inc.*, 106 AD3d 465, 466 [1st Dept 2013]), to which plaintiff is entitled every favorable inference.

The Coop defendants are correct, however, that plaintiff lacks standing to assert a violation of RPL § 441-c or 19 NYCRR § 175.20(b) as neither statute creates a mechanism for an individual to recover for a violation of its provisions by a licensed broker (*see Roberts Real Estate, Inc. v New York State Dept. of State, Div. of Licensing Services*, 80 NY2d 116, 121-122 [1992] ["The licensing sanctions contained in Real Property Law article 12–A, including suspension, revocation, fines or reprimand, were not designed and enacted to supplant existing common-law remedies…the principles of responsibility in the distinct spheres of liability and license regulation ought not be merged"]; *Stowell v Cuomo*, 69 AD2d 9, 12 [1979] ["Section 441-c of the Real Property Law authorizes [the] Secretary of State to revoke or suspend the license of a real estate broker or salesman for violation of any provision of Article 12-A of that law or … for demonstrated untrustworthiness or incompetency to act as a real estate broker."]; *2 Park Ave. Assocs. v Cross & Brown Co.*, 36 NY2d 286, 290 [1975] ["the deterrents and remedies provided in the article for misconduct by licensees are the regulatory sanctions of suspension, revocation, fine and reprimand"]).

Negligence

To the extent plaintiff alleges that defendants West and Greenthal were negligent for failing to conform to the RPL, the complaint fails to plead facts showing that the defendants owed a duty to plaintiff or that plaintiff was injured as a result of a breach of that duty. The allegations that Greenthal improperly collected sublease fees and required board approval for the tenant transfer between sponsor units, even if taken as true, were not injuries suffered by plaintiff, but by plaintiff's client. The Coop defendants had no contractual relationship with plaintiff and thus had no duty to engage in good faith and fair dealing with him (*Four Winds of Saratoga Inc. v Blue Cross and Blue Shield of Cent. New York Inc.*, 241 AD2d 906, 907 [3d Dept 1997] ["There being no contractual relationship, neither can there be any "covenant of good faith and fair dealing" implied which itself is based on the existence of a legal contractual obligation"]). As such, plaintiff's first cause of action is dismissed, as is the third cause of action to the extent it alleges negligence.

Anti-discrimination laws

Plaintiff's fifth cause of action alleges that Ndreu violated New York State anti-discrimination laws when he informed plaintiff that sublease applications were approved on a case-by-case basis, and that Alalouf asked additional questions related to the sublease application of a non-citizen tenant who otherwise met the financial requirements of the building. The complaint fails to state a cause of action as plaintiff does not allege that the questions were discriminatory in nature or were asked for a discriminatory purpose or that they had anything to do with the visa status of the applicant, rather plaintiff alleges that they were asked in order to "discredit and harm plaintiff" (NYSCEF doc. no. 5, ¶ 92). Further, plaintiff does not allege that the building did not approve the tenant's sublease application.

Unfair trade practices/misappropriation of trade secrets

Plaintiff also failed to state any cognizable claim that the Coop defendants engaged in unfair trade practices or the misappropriation of trade secrets. Plaintiff did not plead any facts to

establish that "lease break dates" are considered confidential trade secrets. The complaint did not establish that this information was secret and was not readily ascertainable through other means (*see Atmospherics, Ltd. v Hansen*, 269 AD2d 343, 343 [2d Dept 2000] [trade secret protection did not attach where the names and addresses of potential customers and their representatives were readily ascertainable]). Nor did the complaint establish that plaintiff enjoyed exclusive access to this information (*see E.J. Brooks Company v Cambridge Security Seals*, 31 NY3d 441, 454 [2018], quoting *Ruckelshaus v Monsanto Co.*, 467 US 986, 1012 [1984]] ["plaintiff's injury in trade secret misappropriation cases includes the loss of 'competitive advantage over others … by virtue of its exclusive access' to the secret"]). As such, plaintiff's ninth cause of action is dismissed.

Defamation

To the extent plaintiff alleges that the Coop defendants defamed him as an independent tortious act, that claim, as alleged, is dismissed for failure to state a cause of action. To sufficiently state a defamation claim, the pleadings must "set[] forth the particular words that were said, who said them and who heard them, when the speaker said them, and where the words were spoken" (CPLR 3016[a]; *Amaranth LLC*, 71 AD3d 40; *Dillon v City of New York*, 261 AD2d 34, 37–38 [1st Dept 1999]). To be actionable, the alleged defamatory statement must "tend[] to 'expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of him in the minds of right-thinking persons, and to deprive him of their friendly intercourse in society' " (*Foster v Churchill*, 87 NY2d 744, 751 [1996] [quoting *Rinaldi v Holt, Rinehart & Winston*, 42 NY2d 369, 379 [1977]]). Here, the statements that plaintiff alleges are defamatory are an email sent from an employee at Boardpackager that allegedly incorrectly informed a shareholder that there were "deficiencies" in their board application, an email sent to plaintiff stating that he had been "abusive" to Ms. Garcia during their verbal altercation and that he needed to apologize, and emails to shareholders recommending Shaer as the building's "preferred" broker and characterizing Shaer as a "more reputable agent."

The only statement with the potential for defamatory connotation is that Shaer was a "more reputable agent." The other statements do not rise to the level of subjecting a person to ridicule or disgrace. "To assert defamation regarding one's business or profession, the statement must charge the plaintiff with conduct incompatible with the proper conduct of business, including being incompetent or incapable in the trade, business or profession" (*Under the Milky Way LLC v Allieta*, 2020 NY Slip Op. 31463[U], *9 [Sup Ct, New York County 2020], citing *Liberman v Gelstein*, 80 NY2d 429, 436 [1992]). This " 'consists of a statement that either imputes some form of fraud or misconduct or a general unfitness, incapacity, or inability to perform one's duties' " (*Allieta*, 2020 NY Slip Op. 31463[U], *9-10, quoting *Jacobus v Trump*, 55 Misc. 3d 470, 480 [Sup Ct, New York County], *affd* 156 AD3d 452, 453 [1st Dept 2017]). The complaint does not allege that the email containing the statement that Shaer was a "more reputable agent" mentioned plaintiff, however affording the plaintiff every favorable inference, given that plaintiff had previously represented the shareholder who received the email, and in response to the email, the shareholder indicated that she would continue to utilize plaintiff as her broker, the pleadings establish that the statement was made in reference to plaintiff. However, in context, the statement merely conveys that Shaer was a preferable choice, not that plaintiff was disreputable or unfit to perform in his profession; such a "general reflection upon the plaintiff's character or qualities" does not rise to the level of injury to professional reputation to constitute per se defamation such that plaintiff did not need to

plead special damages (*see Aronson v Wiersma*, 65 NY2d 592, 593-594 [1985]). As plaintiff did not suffer the loss of any business as a result of this statement sent to one shareholder, he cannot establish damages and the defamation claim must be dismissed (*id.*).

Malice

Although plaintiff failed to show that the Coop defendants acted through wrongful means, considering the allegations in a favorable light to plaintiff, there are sufficient facts to state a claim that the Coop defendants were motivated by malice in seeking to have plaintiff replaced by Shaer. Significant animosity developed between the Coop defendants and plaintiff, manifesting in alleged threats that plaintiff would be "banished" from doing business in the building, an email from defendant Alalouf threatening to contact law enforcement and to obtain a restraining order against plaintiff who he accused of sending libelous, hateful, and harassing emails (NYSCEF doc. no. 20), and threats from defendant Ndreu and Greenspan that they would delay or ignore any deals brokered by plaintiff (NYSCEF doc. no. 5, ¶ 90). All of this occurred after plaintiff alerted the Zirinsky Group that it did not need to pay sublease fees for sponsor units and reported Greenthal to state licensing authorities for violations of the RPL, which plaintiff sufficiently alleged were retaliatory and motivated by personal animus towards him (NYSCEF doc. no. 5, ¶¶ 69-83, 96-102, 133-143). The building and management company had no discernible economic interest in having Shaer broker deals instead of plaintiff, particularly where the purported reason for giving Shaer "preferred" status was to have a broker who had a deep understanding of the building (NYSCEF doc. no. 11). Plaintiff had been brokering shareholder deals at 110 Coop for over 20 years and thus possessed that understanding more so than a broker who was relatively new to the building. As such, the Coop defendants are not entitled to dismissal of the claim of tortious interference with prospective business relations.

Accordingly, it is hereby

ORDERED that the Compass defendants' motion to dismiss the complaint pursuant to CPLR 3211(a)(5) and (7) (motion sequence 001), is granted; and this action is dismissed as to the Compass defendants; and it is further

ORDERED that the Coop defendants' motion to dismiss the complaint pursuant to CPLR 3211(1) and (7) (motion sequence 002), is granted as to all claims except for the claim for tortious interference with potential business relationships; and it is further

ORDERED that the parties shall appear for a conference on February 21, 2023 at 10:00 a.m.; and it is further

ORDERED that the Compass defendants shall serve a copy of this decision and order upon all parties, with notice of entry, within ten (10) days of entry.

This constitutes the decision and order of the Court.

1/24/2023
DATE

DAKOTA D. RAMSEUR, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED			[X]	NON-FINAL DISPOSITION	
	[ ]	GRANTED	[ ]	DENIED	[X]	GRANTED IN PART	[ ] OTHER
APPLICATION:	[ ]	SETTLE ORDER			[ ]	SUBMIT ORDER	
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN			[ ]	FIDUCIARY APPOINTMENT	[ ] REFERENCE