PJD Corporate Realty, Inc. v Henry George Sch. of Social Science
2025 NY Slip Op 34154(U)
October 28, 2025
Supreme Court, New York County
Docket Number: Index No. 652616/2017
Judge: Sabrina Kraus
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SABRINA KRAUS** **PART** **57M**

Justice

---X

PJD CORPORATE REALTY, INC.,

Plaintiff,

- v -

HENRY GEORGE SCHOOL OF SOCIAL SCIENCE,

Defendant.

---X

INDEX NO. 652616/2017

MOTION DATE 07/29/2025

MOTION SEQ. NO. 011

Action # 1

HENRY GEORGE SCHOOL OF SOCIAL SCIENCE,

Plaintiff,

- v -

PJD CORPORATE REALTY, INC., PHILIP J. DWYER,

Defendants.

---X

INDEX NO. 6525417/2018

Action # 2

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 011) 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372

were read on this motion to/for SUMMARY JUDGMENT.

BACKGROUND

PJD Corporate Realty, Inc. (“PJD”) commenced an action (“Action One”) seeking damages for breach of contract for the alleged violation of a July 7, 2015, exclusive brokerage agreement by Henry George School of Social Science (“Henry George”).

In response, Henry George commenced an action ("Action Two") seeking damages for alleged unlawful real estate commissions paid in violation of Real Property Law §§ 400-a and 442 against PJD.

FACTS

PJD is a New York corporation licensed to transact business as a real estate brokerage firm in the state of New York. Philip J. Dwyer ("Dwyer") was the president and sole shareholder of PJD, and both Dwyer and PJD were licensed to perform real estate brokerage services in the state of New York.

In addition to PJD, Dwyer was the sole shareholder of another real estate brokerage firm, PJD Corporate Realty of New Jersey, Inc. ("PJD NJ"), a New Jersey corporation. In 2013, Karen Hahner ("Hahner"), who was licensed as a real estate broker in the state of New Jersey, was employed by PJD NJ. Neither PJD NJ nor Hahner were licensed to perform real estate brokerage services in New York.

Around 2013, the Henry George, an educational nonprofit incorporated in New York, hired PJD to assist them in leasing classroom space in New York City, after a flood at one of its buildings (Exhibit 2 ("Hahner Deposition") at 37–38). PJD tasked Hahner with finding suitable properties. Hahner showed several properties in New York City to representatives of Henry George for the purposes of both rental and purchase (*id.* at 39–40). Under this arrangement, Henry George periodically paid PJD $450.00 for Hahner's services from 2013 to 2017 (*id.* at 101; Exhibit 6 at 2–16).

Hahner and Dwyer each testified that Hahner's work was done under a co-brokerage agreement between PJD and PJD NJ, in which PJD would split the funds it received from Henry George for Hahner's work between the two entities (Exhibit 1 ("Dwyer Deposition") at 66; *see*

also Hahner Deposition at 65–66). This agreement was not reduced to writing (Dwyer Deposition at 66). Hahner also held herself out to Henry George as being employed by PJD, not PJD NJ (Exhibit 7 ("Hahner Emails") at 2–4).

On July 7, 2015, Andrew Mazzone, the president of Henry George, sent PJD a letter hiring Dwyer and PJD as Henry George's "exclusive broker" in the search for the rental or purchase office space in New York City (Exhibit G ("Agreement") at 1). The Agreement stated that Henry George would recognize PJD as its exclusive broker in connection with any properties submitted to them by PJD, and PJD would "look to" the ultimate landlord or seller to negotiate PJD's commission (*id.*). The Agreement was to be effective through January 2016, after which it would automatically renew for six-month periods, unless either party canceled the Agreement with 60 days' notice (*id.*). After this date, Hahner searched for properties and while Dwyer helped negotiate offers for Henry George (Exhibit W ("Hahner Affirmation") at 3, ¶ 8; Exhibit X at 2, ¶ 5).

Around December 2016 to January 2017, Henry George engaged a different agency, Douglas Elliman Real Estate, to search for properties (Exhibit K at 1). On January 3, 2017, George Van der Ploeg ("Van der Ploeg"), a real estate broker for Douglas Elliman, arranged for Mazzone to see a property located at 149 East 38th Street, New York, New York ("the Subject Property") owned by Edinburgh Seven Seas, LLC ("Edinburgh") (*id.*). After being shown the Subject Property, Mazzone wrote to PJD on January 8, 2017, to terminate the parties' exclusive brokerage agreement (Exhibit H at 1). Douglas Elliman then prepared a deal sheet for Henry George and the seller on January 20, 2017, identifying Douglas Elliman as the broker and Henry George as the buyer (Exhibit N at 2). On February 20, 2017, 37 days after Henry George issued

its notice of termination, Henry George's board of trustees convened to approve the purchase of the Subject Property (Exhibit S at 45).

PJD did not participate in the procurement of the Subject Property nor the negotiation of the purchase price. Additionally, neither Henry George nor Douglas Elliman informed Edinburgh that PJD and Henry George were part of an exclusive brokerage agreement.

On April 28, 2017, Henry George closed on the Subject Property for a purchase price of $7,800,000.00 (*id.* at 71; Exhibit T at 77). PJD had no knowledge that Edinburgh was the seller in the transaction until the parties closed on the Subject Property (Dwyer Deposition at 52–53).

RELEVANT PROCEDURAL HISTORY

PJD commenced Action One by filing a summons and complaint on or about May 15, 2017, which was subsequently amended to add Douglas Elliman and Edinburgh as defendants.

On October 12, 2018, Henry George, Douglas Elliman and Edinburgh moved to dismiss the complaint based on failure to state a cause of action and documentary evidence. Pursuant to a decision entered on the record in April 2019, the Court (Reed, J) granted the motion as to Douglas Elliman and Edinburgh, but denied the motion as to Henry George.

On June 11, 2020, the Appellate Division, First Department unanimously affirmed Justice Reed's decision holding:

> Because the letter agreement at issue was a unilateral contract, it did not need to be supported by a mutual promise from plaintiff to be enforceable (*Flemington Natl. Bank & Trust Co. [N.A.] v. Domler Leasing Corp.,* 65 A.D.2d 29, 410 N.Y.S.2d 75 [1st Dept. 1978], *affd sub nom. Flemington Natl. Bank & Tr. Co. v. Domler Leasing Corp.,* 48 N.Y.2d 678, 421 N.Y.S.2d 881, 397 N.E.2d 393 [1979]).
>
> While the failure to identify plaintiff as buyer's broker can be actionable, it is only actionable where plaintiff has some contractual or other entitlement to be paid once it is identified as the broker (*Lansco Corp. v. N.Y. Brauser Realty Corp.,* 63 A.D.3d 513, 513–514, 881 N.Y.S.2d 74 [1st Dept. 2009]). Because there was no such entitlement here, and

> seller did not agree to pay plaintiff any commission, there was no cause of action against seller or its broker for the commission.

PJD Corp. Realty Inc. v. Henry George Sch. of Soc. Sci., 184 A.D.3d 440, 441, (Mem)–830 (2020).

On September 15, 2022, Henry George moved for summary judgment in Action One. This Court granted that motion pursuant to a decision and order dated September 23, 2022.

On November 28, 2023, the Appellate Division, First Department reversed that determination holding:

> HGS did not establish its entitlement to summary judgment dismissing the complaint as against it. HGS cannot show that under either this Court's prior decision in this matter (*PJD Corporate Realty Inc. v. Henry George Sch. of Social Science,* 184 A.D.3d 440, 123 N.Y.S.3d 829 [1st Dept. 2020]) or other case law, a plaintiff broker's claim is viable only where a right to a commission from the seller has been formally secured in a retention agreement or by a separate contract. Such a claim is viable where, as here, the only agreement is between the buyer's exclusive broker and the buyer, and the agreement provides that the broker will "look to" the seller for its commission. Where the evidence suggests that a buyer failed to call a seller's attention to the identity of an exclusive broker, thus frustrating the broker's opportunity to look to the seller in order to secure its commission, that evidence is sufficient for a valid claim by the broker against the buyer for breach of an exclusive broker agreement. Further, the commission that the seller paid to a third-party broker provides the basis, among other things, for measuring the potential damages recoverable by the buyer's exclusive broker on its claim (*see Interactive Props., Inc. v. Doyle Dane Bernbach, Inc.,* 125 A.D.2d 265, 268, 509 N.Y.S.2d 806 [1st Dept. 1986], *lv denied* 70 N.Y.2d 613, 524 N.Y.S.2d 431, 519 N.E.2d 342 [1987]; *Kaplon–Belo Assoc. Inc. v. Cheng,* 258 A.D.2d 622, 622–623, 685 N.Y.S.2d 768 [2d Dept. 1999]).

PJD Corp. Realty, Inc. v. Henry George Sch. of Soc. Sci., 221 A.D.3d 548, 548 (2023).

On March 7, 2024, this Court granted PJD's motion to consolidate the two actions for joint trial.

PENDING MOTION

On August 14, 2025, PJD moved for an order granting partial summary judgment under CPLR § 3212 (mot. seq. 011) on its claim for breach of contract against Henry George in the

Action One, summary dismissal of Henry George's claim against PJD to recover an unlawful brokerage commission paid in violation of RPL §§ 440-a and 442 in the Action Two.

For the reasons set forth below, the motions are granted.

DISCUSSION

Summary judgment is a drastic remedy reserved for cases when it is apparent that "no material and triable issue of fact is presented" (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). To prevail on a motion for summary judgment, the movant must establish *prima facie* entitlement to judgment as a matter of law, tendering evidence in admissible form to demonstrate the absence of any triable issues of fact (CPLR § 3212(b); *Matter of New York City Asbestos Litig.*, 33 NY3d 20, 25–26 [2019]; *Zuckerman v New York*, 49 NY2d 557, 562 [1980]). When the movant meets this burden, summary judgment will be granted unless the nonmovant offers evidence in admissible form that shows the existence of triable issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). However, "[m]ere conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient" to overcome a motion for summary judgment (*Justinian Capital SPC v WestLB AG*, 28 NY3d 160, 168 [2016], quoting *Gilbert Frank Corp. v Fed. Ins. Co.*, 70 NY2d 966, 967 [1988]). Courts view the evidence in a light most favorable to the nonmovant, according the nonmovant "the benefit of every reasonable inference" (*Negri v Stop & Shop, Inc.*, 65 NY2d 625, 626 [1985]).

PJD's motion to dismiss Henry George's claim in Action Two

Section 440(1) of the RPL defines a real estate broker as:

> any person, firm, limited liability company or corporation, who, for another and for a fee, commission or other valuable consideration, lists for sale, sells, at auction or otherwise, exchanges, buys or rents, or offers or attempts to negotiate a sale, at auction or otherwise, exchange, purchase or rental of an estate or interest in real estate . . . . (RPL § 440(1)).

Section 440-a prohibits persons and business associations who are unlicensed as a real estate broker in New York from transacting business described in section 440(1), providing:

> No person, co-partnership, limited liability company or corporation shall engage in or follow the business or occupation of, or hold themselves or itself out or act temporarily or otherwise as a real estate broker or real estate salesperson in this state without first procuring a license therefor as provided in this article (RPL § 440-a).

Section 442-e(3) enables recovery for payment to persons unlawfully transacting business as a real estate broker, providing:

> In case the offender shall have received any sum of money as commission, compensation or profit by or in consequence of his violation of any provision of this article, he shall also be liable to a penalty of not less than the amount of the sum of money received by him as such commission, compensation or profit and not more than four times the sum so received by him, as may be determined by the court, which penalty may be sued for and recovered by any person aggrieved and for his use and benefit, in any court of competent jurisdiction (RPL § 442-e(3)).

In sum, Article 12-A establishes the framework for licensing real estate brokers, proscribing the unlicensed transaction of real estate brokerage services, and providing remedies for persons who pay for unlawful services. As explained by the Court of Appeals, Article 12-A is "a regulatory statute setting up a comprehensive plan to assure, by means of licensing, that standards of competency, honesty and professionalism are observed by real estate brokers and salesmen" (*2 Park Ave. Assoc. v Cross & Brown Co.*, 36 NY2d 286, 289 [1975]).

There are exceptions, however, to Article 12-A's general prohibition on the unlicensed transaction of real estate brokerage services. Section 442(1), entitled "Splitting commissions," prohibits the splitting of commissions among licensed brokers and unlicensed persons, but it contains a notable exception:

> No real estate broker shall pay any part of a fee, commission or other compensation received by the broker to any person for any service, help or aid rendered in any place in which this article is applicable, by such person to the broker in buying, selling, exchanging, leasing, renting or negotiating a loan upon any real estate . . .

> *unless such a person be . . . regularly engaged in the real estate brokerage business in a state outside of New York* (RPL § 442(1) [emphasis added]).

The case law interpreting section 442(1) is thin. In *Amirkhanian v Berniker*, the First Department held that an unlicensed plaintiff was precluded from recovering a referral fee under RPL § 442-d because he lacked "a New York real estate broker or real estate salesperson license" and a referral "is a service for which a New York real estate broker's license is required" (147 AD3d 475, 475 [1st Dept 2017]). The court reasoned in *dicta*, however, that if the plaintiff were licensed in California—the plaintiff's home state—he could have recovered the commission under section 442(1) (*see id.*). Moreover, the New York County Supreme Court in *Roberts v H. Gin Realty Corp.*, cited by the First Department in *Amirkhanian*, held that the broker-plaintiffs—two licensed in New York and one in New Jersey—were entitled to recover their commission under an oral co-brokerage agreement (145 Misc. 2d 618, 619 [Sup Ct, New York County 1989]). The court reasoned that by enacting section 442(1), the Legislature "explicitly approved" of co-brokerage agreements between New York brokers and out-of-state brokers (*id.*). Finally, in *Douglas Elliman of Li, LLC v Breitenbach* the court denied summary dismissal of the plaintiff's complaint on the basis that some of the plaintiff's brokers were licensed only in Florida and that section 442-d bars actions to recover real estate commissions when the plaintiff does not prove that they were a duly licensed real estate broker or salesperson (2021 NY Misc LEXIS 80090, *4 [Sup Ct, Suffolk County 2021]). The court reasoned that ruling for the defendant would mean "that the legislature intended Real Property Law § 442-d to invalidate a portion of Real Property Law § 442 (1)" (*id.*).

This Court follows the Court's reasoning in *Breitenbach*. First, RPL § 442(1) enumerates different forms of payment that may be split with a person regularly engaged in the real estate

business outside New York. Under the exception, a New York broker may split "any part of a fee, commission *or any other compensation*," indicating that it would be permissible for an out-of-state broker to engage in more than one type of service for which such compensation would be split in New York (RPL § 442(1)). Additionally, the Legislature must also have intended brokers licensed outside of New York to lawfully engage in real estate brokerage services "for which a New York real estate broker's license is required" (*see Amirkhanian*, 147 AD3d at 475).

While Henry George seeks recovery of the amounts paid to Hahner for her assistance in helping Henry George lease a classroom space, the brokerage services specifically enumerated by section 442(1) include "buying, selling, exchanging, *leasing*, *renting* or negotiating a loan upon . . . real estate" (RPL § 442(1) [emphasis added]). To lease or rent real estate, the broker must also search for properties and show them to their client, which Henry George alleges Hahner did unlawfully (Exhibit 7 at 7–8). But to "avoid rendering" any term in section 442(1) "surplusage," (*Kamhi v Planning Bd. of Yorktown*, 59 NY2d 385, 391 [1983]), the Court must rule that section 442(1) permits out-of-state brokers regularly engaged in the real estate business to perform the services done by Hahner in the Second Action when the out-of-state broker operates under a commission-splitting agreement with a New York broker.

Henry George offers no evidence that the Legislature intended sections 440-a or 442-c to obviate the commission-splitting exception under section 442(1). While Hahner did engage in services that might normally require a real estate broker's license in New York—such as searching for properties for Henry George to rent in New York City and showing the properties to representatives of Henry George in New York City (Exhibit 7 at 7–8)—Hahner did so while she was employed by PJD NJ (Exhibit 2 ("Hahner's W-2") at 1). When she performed these

services, Hahner was licensed to practice real estate in New Jersey, meaning that she was regularly engaged in the real estate business outside New York (Exhibit V at 1).

Accordingly, the Court rules that Hahner's real estate brokerage services for Henry George were lawful, granting PJD's motion for summary judgment to dismiss Henry George's claim for recovery of an unlawful real estate commission.

PJD's Motion for Summary Judgment as to Action One

PJD's notice of motion was not defective.

Henry George argues that the Court should deny PJD's motion for summary judgment in relation to the First Action because PJD's notice of motion (NYSCEF Doc. No. 311 ("Notice of Motion") was defective. The Court disagrees.

CPLR § 2214 provides, "A notice of motion shall specify . . . the relief demanded and the grounds therefor. Relief in the alternative or of several different types may be demanded" (CPLR § 2214(a)). A notice of motion is defective when it "fail[s] to state the grounds for relief" (*Onofre v 243 Riverside Dr. Corp.*, 232 AD3d 443, 444 [1st Dept 2024]). A notice of motion may demand relief only as to liability; it need not specify the nature or extent of damages (*see e.g. Rodriguez v City of New York*, 31 NY3d 312, 317–19 [2018] [holding that comparative negligence is an issue of damages that can be decided separately from a plaintiff's motion for partial summary judgment on a defendant's liability for negligence]; *Derix v Port Auth. of New York & New Jersey*, 162 AD3d 522, 522 [1st Dept 2018] [holding that a plaintiff was entitled to summary judgment for negligence on the grounds of liability while reserving the plaintiff's comparative negligence as an issue of damages]).

The Notice of Motion specifies that PJD seeks an order for "partial summary judgment on [PJD's] claim of breach of contract by defendant Henry George School of Social Science"

(Notice of Motion at 1–2). While the Notice of Motion does not speak to the issue of damages, questions of damages are unnecessary for an adjudication of summary judgment as to liability (*see Rodriguez*, 31 NY3d at 317–19). Henry George omits that PJD requested summary judgment for liability on breach of contract, only stating that "while PJD requests 'partial summary judgment' in connection with Action No. 1, it does not specify the actual relief being requested" (Memorandum of Law in Opposition at 10). The Notice of Motion does, however, specify the relief being requested: "summary judgment on [PJD's] claim of breach of contract" (Notice of Motion at 2). The Court sees no reason as to why Henry George would not have been given adequate notice that PJD would argue liability for breach of contract. Accordingly, the Court declines to deny PJD's motion for summary judgment as to the First Action on this basis.

The alleged illegality of the arrangement between PJD and Karen Hahner does not defeat PJD's claim for breach of contract.

Illegality is a defense to an action for breach of contract when the alleged illegality is "central to or a dominant part of the plaintiff's whole course of conduct in performance of the contract" (*FCI Group, Inc. v City of New York*, 54 AD3d 171, 177 [1st Dept 2008], quoting *McConnell v Commonwealth Pictures Corp.*, 7 NY2d 465, 471 [1960]). A claim for breach of contract is not automatically defeated when a contract contemplates the performance of legal conduct and the plaintiff engages in illegal conduct during its execution (*Dunham v Hastings Pavement Co.*, 57 AD 426, 427 [1st Dept 1901]). The operative question is whether the contract "was . . . in fact for the performance of illegal service. If it was not, then it is valid and can be enforced" (*id.*).

As held above, the arrangement between PJD and Hahner was lawful under RPL § 442(1). In any event, Hahner's performance of the contract was not a "central or dominant part"

of the performance of the Agreement (*FCI Group, Inc.*, 54 AD3d at 177). Finally, Henry George has abandoned this defense in its supporting papers, stating that PJD was not seeking a commission for any services performed on behalf of Hahner in the First Action (Memorandum of Law in Opposition at 12–13). The Court thus declines to deny PJD's motion for summary judgment on this basis.

Henry George breached the Agreement when it failed to identify PJD as Its Exclusive Broker in the transaction with Edinburgh

To prevail on a claim of breach of contract, the plaintiff must establish that (1) the parties entered into a valid agreement, (2) the plaintiff performed, (3) the defendant failed to perform and (4) the plaintiff suffered damages as a result (*Flomenbaum v New York Univ.*, 71 AD3d 80, 91 [1st Dept 2009]; *VisionChina Media, Inc. v Shareholder Representative Servs., LLC*, 109 AD3d 49, 58 [1st Dept 2013]).

When a buyer seeks to rent or purchase property, the buyer often hires a real estate broker to assist in that search using an exclusive brokerage agreement. Exclusive brokerage agreements generally fall under two categories: (1) exclusive agencies and (2) exclusive rights to sell (1 NY Prac. Guide: Real Estate § 1.03). Under an exclusive agency agreement, brokers are entitled to a commission when that broker, or any other broker, brings about the purchase of property for a buyer (*see id.*). When an exclusive agency agreement stipulates that a broker must to look to the seller for their commission, but the buyer, without the knowledge of the initial broker, hires another broker who subsequently procures a seller, the initial broker may bring a cause of action against the buyer for breach of the exclusive agreement (*PJD II*, 221 AD3d 548, 548 [1st Dept 2023]). The broker's claim is viable when evidence suggests only that "a buyer failed to call a

seller's attention to the identity of an exclusive broker, thus frustrating the broker's opportunity to look to the seller in order to secure its commission" (*id.*).

Henry George and PJD entered into an exclusive agency agreement in which Henry George hired PJD to search for office space in New York City (Agreement at 1). PJD would also "negotiate the business terms of any lease or purchase agreement" (*id.*). In return, Henry George agreed to identify PJD as its exclusive broker to potential sellers, at which time PJD would "look to the landlord/seller" for PJD's commission (*id.*).

There is undisputed evidence that representatives of Henry George, who were dissatisfied with PJD's performance, hired Douglas Elliman while they knew that the Agreement was still in effect. When hiring Douglas Elliman, Andrew Mazzone, the President of Henry George, emailed Douglas Elliman's broker that he "killed" Henry George's "current real estate agreement" with PJD, but the Agreement nevertheless had a "60 day clause" (Exhibit O at 1). When the board of Henry George authorized the purchase of the Subject Property, only 37 days elapsed since Mazzone initiated the termination of the Agreement, not the 60 days' notice that the Agreement required (*see* Exhibit S at 45)). Henry George then executed an indemnification agreement from Douglas Elliman on March 31, 2017, providing that Douglas Elliman would indemnify Henry George from:

> any . . . liability or expense . . . arising out of claims of any broker or other persons for commissions or finder's fees, or any claim whatsoever arising out of such claims . . . in connection with the purchase of the [Subject Property] up to the amount of listing agent commission (one collected by Douglas Elliman Real Estate at closing) (Exhibit Q at 1).

Henry George also failed to identify PJD as its exclusive broker to the seller, Edinburgh, thus preventing PJD from looking to Edinburgh for its commission under the Agreement. Dwyer's deposition testimony reads as follows:

> Q. So, what efforts, if any, did PJD make to reach out to the seller about a commission in connection with this transaction?
>
> A. Prior to closing, it was impossible since we really didn't know who the seller was. And subsequent to closing, my experience from over the past 40 years has indicated that would be fruitless. (Dwyer Deposition at 52–53).

Because PJD did not know the identity of the seller in the transaction with Henry George, PJD could not look to Edinburgh to negotiate its commission. And as the First Department held in *PJD II*, an action for breach of an exclusive buyer-broker agreement is actionable when "the evidence suggests that a buyer failed to call a seller's attention to the identity of an exclusive broker, thus frustrating the broker's opportunity to look to the seller in order to secure its commission" (*PJD II*, 221 AD3d 548, 548 [1st Dept 2023]).

Henry George counters that there existed no legally enforceable contract between the parties because the Agreement did not specify the price for PJD's commission, a material term to the contract (*see* Memorandum of Law in Opposition at 14–15). Indeed, when an agreement is not "reasonably certain in its material terms," it is not a legally enforceable contract (*Cobble Hill Nursing Home, Inc. v Henry & Warren Corp.*, 74 NY2d 475, 482 [1989], citing Restatement [Second] of Contracts § 33 [1981]). However, this argument was foreclosed by the First Department in *PJD II*, holding that in this case "the commission that the seller paid to a third-party broker provides the basis, among other things, for measuring the potential damages recoverable by the buyer's exclusive broker on its claim" (*PJD II*, 221 AD3d at 548). Because the commission paid to Douglas Elliman by Henry George could not have possibly been ascertained by Henry George and PJD at the time that they executed their Agreement, the

Agreement did not need a price term to form an enforceable contract between the parties.[1] Thus, the Court declines to deny summary judgment to PJD on this basis.

In conclusion, PJD has made a *prima facie* showing that a legally enforceable agreement existed between PJD and Henry George, PJD performed its obligations under the Agreement, Henry George failed to identify PJD as its exclusive broker during the purchase of the Subject property, and PJD suffered damages as a result. Accordingly, the Court grants PJD's motion seeking summary judgment on its claim of breach of contract against Henry George.

CONCLUSION

Accordingly, it is hereby:

ORDERED that the motion of PJD Corporate Realty, Inc. as to the Action One for partial summary judgment on its breach of contract claim is granted; and it is further

ORDERED that an immediate trial of the issues regarding damages shall be had before the Court; and it is further

ORDERED that the parties appear for a virtual pre-trial conference before the Court on November 6, 2025 at 3 pm; and it is further

[1] In reply, PJD notes that the First Department sidestepped this argument in *PJD I* when it was raised by Douglas Elliman as a basis for dismissal (Reply Memorandum of Law at 6–7). In that decision, the First Department dismissed PJD's complaint against Douglas Elliman and Edinburgh on the basis that no contract existed between PJD and Douglas Elliman and Edinburgh (184 AD3d 440, 440 [1st Dept 2020]). As an alternative basis for dismissal, Douglas Elliman had argued that the Agreement was not an enforceable contract because it lacked the essential term of price (Exhibit AA at 19–20). The First Department's decision did not adopt Douglas Elliman's argument that the contract was wholly unenforceable; it only ruled that no contract existed between PJD and Douglas Elliman and Edinburgh, dismissing PJD's claims against them (*see PJD I*, 184 AD3d at 440).

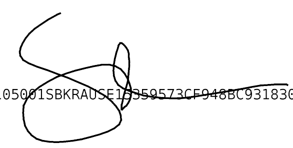
ORDERED that the motion of PJD Corporate Realty, Inc. in Action Two is granted and the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

ORDERED that, within ten (10) days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119, New York, NY 10007); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of this Court.



10/28/2025
DATE

SABRINA KRAUS, J.S.C.

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