

March 4, 2012

Fred Moore  
Blalock Walters  
802 11<sup>th</sup> Street West  
Bradenton, Florida 34205

Dear Sirs:

We intend this week to consummate the purchase of the Galleria Plaza and certain adjacent parcels. As you may be aware, both the Seller, Mr. Michael Miller, and the Buyer, Dr. John Cassidy, are in possession of PNC Bank's approval of the terms of the contract for purchase, including the renegotiated purchase price offered by PNC Bank and agreed to by Dr. Cassidy, the renegotiation of which was necessitated by Mr. Lurie's misrepresentations regarding the existence of a corporate, parent guaranty of the Frank Theatres lease and Mr. Lurie's material overstatement of the net operating income of the Galleria Plaza.

The necessity of renegotiating the Galleria Plaza purchase price, as well as Mr. Lurie's attempts to interfere with this transaction by promoting competing bids in direct contravention of his principal's express directives, have delayed the closing of this transaction by at least three weeks, and caused us to incur substantial losses and expenses. Between the loss of Galleria Plaza rental revenues to Dr. Cassidy as a result of delays in closing this transaction (delays directly occasioned by Mr. Lurie), and the expenses incurred by both of us in retaining Morgan & Bruning to advise us with regard to Mr. Lurie's dispute with Ms. Tilseth, and Brannon, Brown, Haley & Bullock to advise us with regard to claims against Mr. Lurie for his ethical breaches, Mr. Lurie's negligence and attempts to disrupt this transaction have cost us over \$100,000. We are unwilling to tolerate further interference with this transaction from Mr. Lurie.

We hereby demand that Mr. Lurie stop all efforts to interfere with the consummation of this transaction. Mr. Lurie must immediately remove the Galleria Plaza from the "Current For Sale" page at the Florida Growth Realty website, as he has been unambiguously informed by his principal, Mr. Miller, that the property is off the market. He must immediately comply with his principal's directive to discontinue all efforts to solicit competing bids for the Galleria Plaza. He must desist from contacting PNC Bank with offers of competing bids. If Mr. Lurie does not immediately comply with these demands, we will infer that he intends to continue his efforts to interfere with the consummation of this transaction, and we will pursue any and all legal remedies available to us.

Ms. Tilseth will not agree to any division of the available commissions on this transaction that does not reflect her efforts to consummate this transaction in the face of Mr. Lurie's interference. Ms. Tilseth remains willing and eager to resolve any differences with Mr. Lurie over

commissions, but Mr. Lurie's prior offers have been inequitable and inadequate, both from the perspective of market conventions for transactions of this type and from the perspective of the relative contributions to this transaction made by the respective parties.

We are willing to have these matters presented before any competent tribunal with jurisdiction over these disputes, be it arbitratative or judicial. We have been advised that in the absence of any agreement between Mr. Lurie and Ms. Tilseth for the division of commissions on this transaction, any such tribunal will apply a "procuring cause" analysis, an analysis with which Ms. Tilseth is content. She is confident that any tribunal applying such analysis will vindicate her claim to commissions on this transaction.

However, it is our preference to resolve our differences with Mr. Lurie at or prior to closing, so that each of the parties may exchange mutual releases and leave the closing table with their property and commissions free of threats of litigation. Failing this, we will proceed promptly after closing to file with the FREC, and any other real estate body with jurisdiction over Mr. Lurie's activities, complaints against Mr. Lurie alleging multiple and egregious violations of his legal and ethical duties to Dr. Cassidy, Ms. Tilseth, Mr. Lurie's principal, and the public. We have been advised by counsel, based upon the gravity of Mr. Lurie's offenses and the evidence of these offenses our attorneys have amassed, that we have a reasonable expectation that Mr. Lurie's real estate license will be revoked.

We feel it is imperative that efforts to resolve these differences begin immediately if there is to be any prospect of exchanging mutual releases at or prior to closing, and any prospect of avoiding the escrow of the commissions. Toward that end, we have attached as addendums hereto analyses prepared by our attorneys of the contractual issues and the ethical claims against Mr. Lurie. It is our purpose in providing these analyses to assist Mr. Moore in understanding our legal arguments so that he may more knowledgeably and expeditiously engage with Mr. Bentley in negotiations to resolve all outstanding issues.

Sincerely,



John R. Cassidy



Joellen C. Tilseth

cc: Robert Lurie  
Florida Growth Realty, Inc.  
1660 Gulf Boulevard, Suite One  
Clearwater, FL 33767

ANALYSIS OF ETHICAL VIOLATIONS BY MR. LURIE

Intentional or Negligent Misrepresentations; Unlicensed Activity

Virtually from the inception of the Galleria Plaza transaction, Mr. Lurie has evinced a reckless disregard for, and utter indifference to, the standards of care and competence applicable to brokers in Florida.

Mr. Lurie listed the Galleria Plaza property at Loopnet.com under the name of Betsey Lurie, “sole proprietor broker.” Ms. Lurie is currently designated “current, inactive” by the Florida Department of Business and Professional Regulation, and is therefore prohibited under Chapter 475, Section 42 of the Florida statutes from operating as a broker or sales associate. Ms. Lurie is also listed as a broker for the Kane Plaza and Bahia Vista Medical Center, and was listed as the broker for the Belleview Biltmore in 2011 while her license was inactive.

Mr. Lurie continues to list the Galleria Plaza as “Current For Sale” at the Florida Growth Realty website, more than one month after being informed by Seller that the property was off the market. This unauthorized offer for sale fits a pattern in which Mr. Lurie has listed for sale other properties that were not on the market, including the Belleview Biltmore and the Seminole Mall.

Mr. Lurie made two misrepresentations to Buyer that resulted in a material overstatement of the value of the Galleria Plaza. Mr. Lurie materially overstated the net operating income of the Galleria Plaza, and he falsely stated that the Frank Theatres lease, a lease comprising approximately 50% of the rentals from the Galleria Plaza, was guaranteed by the corporate parent. These two misrepresentations, regarding facts of particular significance to Buyer’s valuation of the Galleria Plaza, evince an utter disregard by Mr. Lurie of his duties of care and diligence to Buyer.

Mr. Lurie’s pattern of misrepresentation in the course of the Galleria Plaza transaction and the listing of the property, whether intentional or negligent, violated his obligations to Buyer, Buyer’s agent and the public under Florida law.

Mr. Lurie’s Deceitful Practices in Dealing with Napoleon Realty Group

Mr. Lurie contacted Mr. Vince Napoleon of Napoleon Realty Group by telephone in mid-December while negotiations with Ms. Tilseth and Mr. Napoleon over the commission split were ongoing. Mr. Lurie offered Mr. Napoleon a payment of \$10,000 personally for his assistance in influencing Ms. Tilseth to accept a 1% commission. Mr. Napoleon rejected this offer and conveyed to Mr. Lurie his displeasure with Mr. Lurie’s improper offer.

Mr. Lurie repeatedly represented to Ms. Tilseth and Napoleon Realty Group that commissions on the Galleria Plaza transaction were to be paid per a letter from Mr. Lurie to PNC dated July 13, 2011, and that such commissions were minimal because the Galleria Plaza was a “bank-owned” property. None of these statements by Mr. Lurie was true. PNC has confirmed that it had never

agreed to the terms regarding commissions contained in Mr. Lurie's July 13, 2011 letter. The Galleria Plaza transaction is in fact a "short sale," not a sale of a "bank-owned" property. Finally, PNC has confirmed that Mr. Lurie's July 13, 2011 letter to PNC contemplated a 5% commission on the Galleria Plaza transaction, a commission that could only be characterized as generous on a transaction of this type, in contrast to Mr. Lurie's representations that the commissions were minimal.

Mr. Napoleon immediately informed Ms. Tilseth of Mr. Lurie's improper and unethical overture. On or about December 21, 2011, Mr. Napoleon contacted Mr. Lurie to inform him that Napoleon Realty Group intended to file a complaint against Mr. Lurie with the FREC alleging deceitful practices if Mr. Lurie was not willing to engage honestly and in good faith on the subject of an equitable apportionment of the commissions on the Galleria Plaza transaction.

Mr. Napoleon has confirmed to Ms. Tilseth that he intends to file charges against Mr. Lurie with the FREC if an equitable agreement for commissions is not reached, alleging that Mr. Lurie's offer of an improper, under-the-table payment of \$10,000, and his repeated misrepresentations regarding his alleged arrangement with PNC for commissions, constitute deceitful and unethical practices.

#### Mr. Lurie's Engagement of Mr. Purdy as Sub-Agent and Failure to Disclose Mr. Purdy's Role

At the initial meeting last November among Mr. Lurie, Dr. Cassidy and Ms. Tilseth, Mr. Lurie introduced Terry Purdy as the leasing agent for the Galleria Plaza. Mr. Lurie at all times encouraged the belief on the part of Dr. Cassidy and Ms. Tilseth that Mr. Purdy was nothing more than the leasing agent for the Galleria Plaza. Mr. Purdy proceeded over the course of the following months to meet with Dr. Cassidy and Ms. Tilseth for the purported purpose of discussing potential prospects for leasing unoccupied space in the Galleria Plaza, although he frequently solicited information from Dr. Cassidy regarding the progress of negotiations for the sale of the Galleria Plaza. Mr. Purdy also made statements to Dr. Cassidy that encouraged Dr. Cassidy to believe that Mr. Purdy had no role on behalf of Seller or Mr. Lurie in the sale of the Galleria Plaza.

Dr. Cassidy and Thomas Cassidy met with Mr. Purdy at Mr. Purdy's offices in Nokomis on Monday, February 6<sup>th</sup>. Mr. Purdy revealed to Dr. Cassidy and Thomas Cassidy at this meeting that he had been engaged by Mr. Lurie to work on the Galleria Plaza sale, in exchange for which Mr. Purdy had been compensated by Mr. Lurie. Prior to this meeting, neither Mr. Lurie nor Mr. Purdy had ever disclosed to Dr. Cassidy or Ms. Tilseth that Mr. Purdy had been functioning as Mr. Lurie's sub-agent on the sale of the Galleria Plaza.

Mr. Purdy has confirmed as recently as February 28, 2012, that he was meeting with prospective purchasers of the Galleria Plaza both prior to and subsequent to Dr. Cassidy's entry into the Galleria Plaza Contract, thereby reaffirming that he had been acting as Seller's agent and Mr. Lurie's sub-agent.

The facts and circumstances enumerated above form a sufficient basis for allegations by Dr. Cassidy and Ms. Tilseth that Mr. Lurie and Mr. Purdy engaged in a scheme to conceal from Dr.

Cassidy and Ms. Tilseth that Mr. Purdy was acting as Mr. Lurie's sub-agent, pursuant to which scheme Mr. Lurie intended to elicit from Dr. Cassidy confidential information regarding Dr. Cassidy's views of the ongoing negotiations to purchase the Galleria Plaza, and a sufficient basis for deposing both Mr. Lurie and Mr. Purdy in connection with any action Dr. Cassidy and/or Ms. Tilseth may elect to pursue to against Mr. Lurie.

Mr. Lurie's Violations of Fiduciary Duty to Seller and His Ethical Obligations to Dr. Cassidy and Ms. Tilseth

Dr. Cassidy and Ms. Tilseth were informed by Seller on February 1, 2012, that Seller had received from Mr. Lurie an offer by a California-based investor to purchase the Galleria Plaza. Seller revealed to Dr. Cassidy and Ms. Tilseth that he had received from Mr. Lurie a contract for purchase of the Galleria Plaza executed by such investor, but he had returned such contract to Mr. Lurie and conveyed to Mr. Lurie his rejection of such offer.

On or about Friday, February 3, 2012, Dr. Cassidy and Ms. Tilseth learned that, notwithstanding Seller's rejection of the competing offer submitted by Mr. Lurie, Mr. Lurie had directly approached PNC Bank with such offer. As of February 3, 2012, PNC Bank had not yet issued its final approval of the contract between Buyer and Seller for purchase of the Galleria Plaza. Dr. Cassidy, concerned that Mr. Lurie's promotion of the competing offer to PNC Bank could induce PNC Bank to withhold its approval of Dr. Cassidy's contract to purchase the Galleria Plaza, contacted Seller to arrange a telephone call to discuss this matter.

On February 3, 2012, Mr. Lurie, notwithstanding his principal's rejection on or before February 1, 2012, of the competing offer submitted by Mr. Lurie, sent a letter to PNC Bank in which he continued his attempts to elicit from PNC Bank expressions of interest in the competing offer.

On Sunday morning, February 5, 2012, Dr. Cassidy and Thomas Cassidy called Seller. Dr. Cassidy expressed to Seller his view that Mr. Lurie's direct approach to PNC Bank was improper, given Seller's rejection of the competing offer, and that Mr. Lurie's actions had the potential to interfere with the contract between Seller and Dr. Cassidy by inducing PNC Bank to withhold its approval of the contract. Seller concurred with Dr. Cassidy's view that Mr. Lurie's direct approach to PNC Bank had been improper, and agreed to notify Mr. Lurie that he was to immediately suspend any further efforts to market the Galleria Plaza and desist from soliciting further offers.

Ms. Tilseth contacted Mr. Lurie by telephone the afternoon of Monday, February 6, 2012, to attempt to resolve their differences over commissions. Mr. Lurie abruptly declined to discuss the commissions issue and informed Ms. Tilseth that PNC Bank had accepted the competing bid Mr. Lurie had submitted and that Dr. Cassidy's contract for the purchase of the Galleria Plaza had now been rejected by PNC.

Ms. Tilseth, stunned by Mr. Lurie's claim, immediately contacted Dr. Cassidy, Mr. Richard Saba (Dr. Cassidy's real estate attorney), and Thomas Cassidy to inform them of her conversation with Mr. Lurie. Mr. Saba contacted Seller's attorney to relate Ms. Tilseth's conversation with Mr. Lurie and seek from Seller's attorney confirmation of the veracity or falsity of Mr. Lurie's claim.

Later in the evening of February 6, 2012, Seller contacted Dr. Cassidy and Ms. Tilseth and informed them that PNC Bank had rejected the competing offer submitted by Mr. Lurie.

Seller sent an e-mail to Mr. Lurie the evening of February 6, 2012, informing Mr. Lurie that Seller was unable to consider any competing offers for the Galleria Plaza and directing Mr. Lurie to desist from any further attempts to market the Galleria Plaza. Seller's e-mail to Mr. Lurie further evinced Seller's unfamiliarity with Mr. Lurie's efforts to induce PNC Bank to accept the competing bid, thereby reaffirming Seller's representations to Dr. Cassidy and Ms. Tilseth that Seller had rejected the competing offer and had not been party to Mr. Lurie's efforts to promote the competing bid to PNC Bank.

On Friday, February 10, 2012, Mr. Lurie communicated with a purported prospective purchaser of the Galleria Plaza, unambiguously offering to forward materials relating to the offer for sale of the Galleria Plaza, fully four days after having been directed by his principal to discontinue all such efforts. Also on February 10, 2012, Seller informed Ms. Tilseth that Mr. Purdy had revealed to him that Mr. Lurie had contacted Mr. Purdy earlier that day to enlist Mr. Purdy's assistance in continuing to market the Galleria Plaza property.

To this day Mr. Lurie continues to list the Galleria Plaza as "Current For Sale" at the Florida Growth Realty website, more than one month after being informed by Seller that the property was off the market. This constitutes a deceptive advertising practice by Mr. Lurie and a violation of his obligations as a broker to the public, as well as an ongoing violation of his fiduciary duty to Seller.

Mr. Lurie's continued promotion of a competing bid to PNC Bank following his principal's rejection of such bid, and his utter disregard for his principal's directive to discontinue the marketing of the Galleria Plaza, constitute the gravest possible violation of his fiduciary duty to his principal. Mr. Lurie's continued attempts to market the Galleria Plaza following his principal's directive to desist, following Seller's clear statement to Mr. Lurie that Seller was unable to consider competing bids, plainly evince Mr. Lurie's intent to continue soliciting bids for the purpose of making unauthorized submissions of such bids to PNC, and, therefore, an intent to interfere with Dr. Cassidy's contract to purchase the Galleria Plaza. Mr. Lurie's false representation to Ms. Tilseth on February 6, 2012, that PNC Bank had accepted a competing bid violated Mr. Lurie's obligation under Florida law to refrain from misrepresentation and deceit, and violated the duty imposed upon Mr. Lurie by Florida law to deal fairly and in good faith with Dr. Cassidy and Ms. Tilseth. These violations of Mr. Lurie's duties under Florida law to his principal and to Dr. Cassidy and Ms. Tilseth are sufficient to justify complete forfeiture of Mr. Lurie's claim to any commission on the Galleria Plaza sale transaction and revocation of Mr. Lurie's real estate license.

#### Mr. Lurie's Baseless Assertion of a Right to a Mortgage Brokerage Commission

Mr. Lurie has repeatedly asserted a right to receive \$40,000 mortgage brokerage commission in connection with Capital Bank's agreement with Dr. Cassidy to finance the purchase of the Galleria Plaza. Mr. Lurie initially claimed to Ms. Tilseth that such mortgage brokerage commission would be the obligation of Capital Bank. On February 6, 2012, Mr. Lurie stated to

Ms. Tilseth that Dr. Cassidy, as Buyer and Mortgagor, was obligated to pay Mr. Lurie the \$40,000 commission on the mortgage for the Galleria Plaza. Neither Dr. Cassidy nor Kevin Hagan of Capital Bank has ever agreed to pay Mr. Lurie a mortgage brokerage commission, nor has either ever discussed with Mr. Lurie a mortgage brokerage commission.

Mr. Lurie's completely baseless assertion of a right to a mortgage brokerage commission, in the absence of any agreement therefore, written or oral, and in the absence of any other communication among the parties that would form the basis for a reasonable expectation by Mr. Lurie of a mortgage brokerage commission, constitute a violation of Mr. Lurie's ethical duties as a real estate broker under Florida law.

### Conclusion

Mr. Lurie's actions in promoting a competing bid to PNC Bank following his principal's rejection of such bid, continuing to market the Galleria Plaza after being directed by his principal to desist, and falsely stating to Ms. Tilseth that PNC Bank had accepted the competing bid, constitute profound breaches of trust and fiduciary duty. Each action was undertaken with the knowledge that such action was in direct contradiction of Seller's interest in consummating the Galleria Plaza transaction with Buyer.

It is irrelevant that Seller and Buyer avoided the consequences of Mr. Lurie's misdeeds and the damages that would have resulted therefrom.

“It is immaterial to the guilt of the licensee that the victim or intended victim of the misconduct has sustained no damage or loss; that the damage or loss has been settled and paid after discovery of the misconduct; or that such victim or intended victim was a customer or a person in confidential relation with the licensee or was an identified member of the general public.” Chapter 475, Section 25(1)(b), Florida Statutes

By acting directly contrary to the interests of his principal, Mr. Lurie violated not only the duties owed to his principal as a single agent, but also violated the lower standards of care and duty applicable to transaction brokers.

“This aspect of limited representation allows a licensee to facilitate a real estate transaction by assisting both the buyer and the seller, *but a licensee will not work to represent one party to the detriment of the other party when acting as a transaction broker to both parties.*” Chapter 475, Section 278(c)(3), Florida Statutes

Mr. Lurie's efforts to disrupt the transaction rather than facilitate it were to the detriment of both Seller and Buyer, each of whom plainly professed to Mr. Lurie their intent to consummate their transaction. Even had Mr. Lurie actually believed he was acting in the best interests of Seller, which state of mind is clearly contradicted by the evidence, his false statement to Ms. Tilseth to the effect that PNC Bank had accepted a competing bid was detrimental to Buyer, and was therefore a breach of even the more limited duties imposed under Florida law upon transaction

brokers.

Mr. Lurie's efforts to disrupt the Galleria Plaza transaction rather than facilitate it constitute a breach of trust, regardless of the standard of care and duty applied. A breach of the trust reposed in a broker by his principal is the most serious charge that can be leveled against a broker by the Florida Real Estate Commission. Of the eleven cases in 2011 in which the FREC found a broker guilty of breach of trust, ten of the cases resulted in complete revocation of the broker's license.

The totality of Mr. Lurie's improper actions in the course of the Galleria Plaza transaction – the improper designation of an inactive broker as listing agent on Loopnet.com and other listing services, the offer of improper inducements offered to Mr. Napoleon, Mr. Lurie's deceit upon the public by continuing to list the Galleria Plaza as available for sale after it had been taken off the market, and the various actions taken with a manifest intent to interfere with the consummation of the transaction – plainly evince Mr. Lurie's utter disregard for the obligations imposed upon a broker under Florida law and strongly militate in favor of the FREC's revocation of his professional license.



CONTRACT ANALYSIS

FACTS

Ms. Tilseth executed the Prospect's Acknowledgment and Confidentiality Agreement (the "Confidentiality Agreement") on October 25, 2011. Approximately one week later, on November 2, 2011, Mr. Lurie made an unsolicited offer to Ms. Tilseth of a 1% commission on the Galleria Plaza transaction. Ms. Tilseth declined such offer, and a series of communications ensued among Ms. Tilseth, Ms. Tilseth's Broker, Mr. Vincent Napoleon, of Napoleon Realty Group, and Mr. Lurie, in which Ms. Tilseth and Mr. Napoleon repeatedly rejected Mr. Lurie's offer and countered with proposals for a more equitable split of the commissions. Mr. Lurie declined these counterproposals, and repeatedly attempted to coerce Ms. Tilseth to accept his unsolicited offer of 1%, by means of falsely asserting that Ms. Tilseth had agreed to accept the 1% offer and by means of his offer to Mr. Napoleon of an under-the-table "inducement" of \$10,000 if Mr. Napoleon could convince Ms. Tilseth to accept the 1% offer.

Negotiations over the commissions continued intermittently through December, 2011, and January, 2012, with Mr. Lurie consistently contending that Ms. Tilseth had agreed to a 1% commission. On Wednesday, February 22<sup>nd</sup>, Dr. Cassidy ("Buyer") and Mike Miller ("Seller") received the formal approval of Seller's mortgagee, PNC Bank, of the short sale of the Galleria Plaza on the terms contained in the Galleria Plaza Contract entered into in December, 2011, by entities controlled by Buyer and Seller. Two days later, Mr. Lurie's attorney contacted Ms. Tilseth's representative in the commissions negotiations and asserted, for the first time, that the Confidentiality Agreement constituted Ms. Tilseth's agreement to forego any share of the commissions on the Galleria Plaza transaction.

ANALYSIS

Mr. Lurie's claim that Ms. Tilseth has agreed to forego any share of the commissions on the Galleria transaction is completely unsupported, both as a matter of established contract law and as a matter of any reasonable textual interpretation of the Confidentiality Agreement.

Mr. Lurie contends that contract law permits him to make an unsolicited offer of a share of the commissions as a means of inducing Ms. Tilseth's cooperation in consummating the Galleria Plaza transaction, to realize the benefits to himself and his principal of Ms. Tilseth's efforts to consummate the Galleria Plaza transaction, and then assert, less than two days after PNC's approval rendered the Galleria Plaza Contract fully effective and binding, that the Confidentiality Agreement executed prior to Mr. Lurie's promise of a share of the commissions on the Galleria Plaza transaction binds Ms. Tilseth to forego any share of such commissions.

Even had Ms. Tilseth agreed in the Confidentiality Agreement to forego any share of the Galleria Plaza transaction commissions, Mr. Lurie's decision to make an unsolicited offer of a share of such commissions in order to induce Ms. Tilseth's cooperation in consummating the transaction, his acquiescence over four months in Ms. Tilseth's efforts to consummate the transaction as a result of such inducement, and the full realization of such benefits to himself and principal that

will occur upon closing of the transaction, give rise under contract law to an implied contract between Mr. Lurie and Ms. Tilseth that supersedes any alleged agreement contained in the Confidentiality Agreement. There is no theory of contract law that permits Mr. Lurie to induce Ms. Tilseth's performance by means of his unsolicited offer of a share of the commissions, and then repudiate such offers at the very moment PNC's approval virtually guarantees to Mr. Lurie the benefits of Ms. Tilseth's performance. Mr. Lurie's assertion that Ms. Tilseth had agreed in the Confidentiality Agreement to forego any share in such commissions urges upon us just such an untenable theory of contract law.

Mr. Lurie's contention also fails as a matter of basic textual interpretation of the Confidentiality Agreement. There are at least two reasonable interpretations of the Confidentiality Agreement that establish that Ms. Tilseth never agreed to forego a share of the commissions on the Galleria Plaza transaction. Mr. Lurie's interpretation of the Confidentiality Agreement, by contrast, cannot be reconciled with the plain language of the Confidentiality Agreement and the uncontroverted facts pertinent to this dispute.

Nothing in paragraph (e) precludes the signatory from accepting a commission from the seller's broker, and indeed Mr. Lurie made an unsolicited offer of a commission to Ms. Tilseth. Florida law specifically contemplates such dual compensation arrangements, as long as the arrangement is fully disclosed. Accordingly, one reasonable interpretation of paragraph (e) is that the Buyer and his broker acknowledged that any agreement for compensation would be solely the obligation of the Buyer, and the Buyer would not look to the seller's agent to assume any such obligation. **Of course, Buyer is not looking for seller's agent to assume his obligation to compensate Ms. Tilseth, as no Buyer obligation exists. Buyer and Ms. Tilseth do not have, and have never had, any agreement to compensate Ms. Tilseth for her efforts on Buyer's behalf.** Indeed, it was understood by both Buyer and Ms. Tilseth that Buyer would not compensate Ms. Tilseth for her efforts, and that her compensation would consist of a share of the Galleria Plaza transactions negotiated by Ms. Tilseth with the Seller's broker.

A second reasonable interpretation of paragraph (e) is that it seeks to assure that a Buyer's Broker will not "double dip" on the transaction by collecting both a commission from the Buyer and a cooperating broker commission from the seller's broker. The concept of a Buyer's Broker is plainly set forth under Florida law, which provides that a Buyer's Broker is a broker "*entitled to receive payment from the buyer of commercial real estate of any fee or other compensation for licensed services, as specified in a written contract made between the buyer and the broker.*" As there has never been any agreement between Dr. Cassidy and Ms. Tilseth for payment of a commission, written or otherwise, Ms. Tilseth is not a Buyer's Broker, and, therefore, paragraph (e) of the Confidentiality Agreement by its terms does not apply to Ms. Tilseth. Given that Ms. Tilseth has never had an agreement with Buyer for compensation, paragraph (e) would not be applicable to Ms. Tilseth under this interpretation. This is, in fact, how Ms. Tilseth interpreted this provision, and Mr. Lurie obviously shared Ms. Tilseth's interpretation of paragraph (e), correctly assuming that no such contract for compensation had been entered into and Ms. Tilseth was, therefore, not a Buyer's Broker. This explains why Mr. Lurie made an unsolicited offer to Ms. Tilseth on November 2, 2011, of a 1% commission. Furthermore, Mr. Lurie has been actually aware from the time that negotiations with Ms. Tilseth's commenced in earnest that Ms. Tilseth would not be compensated by Buyer.

Mr. Lurie urges upon us a third interpretation of the Confidentiality Agreement. Mr. Lurie contends that the Confidentiality Agreement is intended to apply to brokers, such as Ms. Tilseth, who are not entitled to compensation from buyer, and is intended to preclude any compensation by the listing broker to such buyer's broker. However, Florida law plainly establishes that a "broker" must have some expectation of compensation for services. If a real estate agent has no expectation of compensation, then the agent is not a "broker" under Florida law. Given that Ms. Tilseth is not, and has never been, entitled to compensation from the Buyer, Mr. Lurie's interpretation of the Confidentiality Agreement leads ineluctably to a conundrum. Under Mr. Lurie's purported interpretation, the Confidentiality Agreement precludes Ms. Tilseth from seeking compensation from Seller's broker *if she is a "broker"*, as such term is used in paragraph (e), but if she is precluded by the Confidentiality Agreement from compensation from Mr. Lurie as listing agent, then she is not a "broker" because she had no expectation of compensation for her services on this transaction, and paragraph (e), by its terms, cannot apply to Ms. Tilseth.

Mr. Lurie's interpretation of paragraph (e) of the Confidentiality Agreement also fails because Mr. Lurie could not have had any reasonable expectation that Ms. Tilseth would forego any compensation at all for her efforts in brokering the Galleria Plaza transaction. Mr. Lurie was aware that she was functioning in her capacity as a licensed agent of Napoleon Realty Group, and was surely aware that Napoleon Realty Group is not in the business of brokering real estate transactions for free.

Finally, Mr. Lurie's belated assertion of the applicability of the Confidentiality Agreement requires that he repudiate his prior assertions that Ms. Tilseth agreed to a 1% commission, and contend that there was never any agreement between Mr. Lurie and Ms. Tilseth for compensation. However, as a matter of law Mr. Lurie is prohibited from adducing the absence of any agreement between himself and Ms. Tilseth for compensation on the Galleria Plaza contract, because it was Mr. Lurie's bad faith and unethical acts that continually thwarted any attempts by Ms. Tilseth to negotiate an agreement for compensation. Mr. Lurie's unethical overture to Mr. Napoleon, and his repeated and baseless assertions that Ms. Tilseth had already agreed to a 1% commission, rendered any attempt at negotiating a contract for compensation impracticable. As a matter of law, Mr. Lurie cannot advance an argument that no agreement for compensation existed between Mr. Lurie and Ms. Tilseth when his own manifestly unethical behavior rendered any such agreement impractical. The "unclean hands" doctrine plainly prohibits Mr. Lurie from advancing this argument.

Furthermore, principles of equitable estoppel preclude Mr. Lurie from asserting that no agreement for compensation was ever entered into, because (i) Mr. Lurie consistently rejected Ms. Tilseth's attempts to negotiate an equitable commission split by baselessly asserting that she had already accepted the 1% offer, and (ii) Ms. Tilseth was induced to perform by Mr. Lurie's promises of compensation and manifestly relied upon those promises. Having asserted that Ms. Tilseth had accepted the 1%, Mr. Lurie cannot now contend that no agreement existed and that the Confidentiality Agreement represents the agreement between the parties.

Once Mr. Lurie's completely insupportable arguments regarding the Confidentiality Agreement are dispensed with, a clear set of incontrovertible facts and basic contract principles emerges. Mr. Lurie made an offer of a 1% commission on November 2, 2011. Ms. Tilseth never accepted

such offer, and both Ms. Tilseth and Mr. Napoleon unambiguously rejected such offer on multiple occasions. Both Ms. Tilseth and Mr. Napoleon, collectively, made multiple counteroffers to Mr. Lurie in good faith. Rather than negotiate in good faith, Mr. Lurie chose to respond with bad faith attempts to improperly induce Mr. Napoleon to either accept the 1% commission or influence Ms. Tilseth to accept it. He further attempted, in bad faith, to coerce Ms. Tilseth into accepting in writing the 1% offer by falsely and baselessly asserting that she had already orally agreed to the 1% offer. Any assertion by Mr. Lurie that Ms. Tilseth had agreed to accept a 1% commission is refuted by the facts and evidence. Furthermore, even had Ms. Tilseth agreed to accept the 1% commission, as Mr. Lurie avers, such agreement would have procured by Mr. Lurie's false representations to Ms. Tilseth that he had an agreement with PNC as to the amount of the commissions available in the Galleria Plaza transaction. PNC has confirmed that no such agreement existed at the time Mr. Lurie made these representations to Ms. Tilseth. Accordingly, it is clear that any claim by Mr. Lurie that an agreement was reached with Ms. Tilseth fails because of Mr. Lurie's fraud in the inducement.

There does not exist any written or oral agreement between Mr. Lurie and Ms. Tilseth regarding commissions. Mr. Lurie's refusal to engage in good faith negotiations rendered impracticable any attempt by Ms. Tilseth and Mr. Napoleon to arrive at a mutually acceptable agreement. In the absence of any agreement between Ms. Tilseth and Mr. Lurie, and in light of the incontrovertible fact that Ms. Tilseth fully performed her obligations to her principal in the Galleria Plaza transaction, the benefits of which will be fully realized by Mr. Lurie and the Seller at closing, a court or other tribunal will have no choice but to apply a "procuring cause" analysis of all the available facts and circumstances in order to resolve the dispute over brokerage commissions.

The facts and circumstances of this case demonstrate beyond question that Ms. Tilseth worked diligently toward closing this transaction, while Mr. Lurie repeatedly and relentlessly sought to interfere with the consummation of the contract between Buyer and Seller. Mr. Lurie's brazen and improper offer to Mr. Napoleon of an improper inducement caused Buyer and Ms. Tilseth to doubt the feasibility of consummating a transaction in the face of such demonstrated bad faith. Mr. Lurie's failure to disclose to Buyer and Ms. Tilseth that Mr. Terry Purdy of Merritt Realty was functioning as Mr. Lurie's sub-agent on the transaction further caused Buyer and Ms. Tilseth to doubt the feasibility of consummating the transaction. Mr. Lurie's unauthorized approach to PNC with a competing bid, and his continued promotion of such competing bid to PNC following Seller's rejection of the competing bid, precipitated a crisis in the transaction that understandably caused Buyer to suspend his efforts toward closing until Mr. Lurie had been instructed by Seller to stop attempts to interfere with contract between Buyer and Seller. Mr. Lurie's continued efforts to solicit competing bids for the Galleria Plaza, even in the face of his principal's unambiguous direction to discontinue such solicitations, evinced Mr. Lurie's clear intent to persist in approaching PNC with competing bids, in complete disregard for his principal's interests, in an effort to induce PNC to withhold its approval of the contract between Buyer and Seller and thereby interfere with Seller's stated intent to proceed to closing on the contract with Buyer. Application of the "procuring cause" analysis by any tribunal could very well reach the conclusion that Mr. Lurie has forfeited any commission on the Galleria Plaza transaction.

## Forfeiture of Commission

Florida caselaw is replete with cases in which broker's have been found to forfeit their right to a commission by violating their fiduciary duty. From Prall v. Corum, 403 So.2d 991 (1981):

Any concealment from the principal of material facts known to the broker will forfeit the broker's right to compensation for his services. Carter v. Owens, 58 Fla. 204, 50 So. 641 (1909).

It is irrelevant whether the broker's breach caused damage or financial injury to his principal. Also from Prall v. Corum:

Nondisclosure of a material fact by a broker, where it occurs, will operate to bar his recovery of a commission even though the principal may have suffered no financial injury as a result thereof and may have received full value for the property sold. Crosby v. Ashley, 291 So.2d 12 (Fla.3d DCA 1974).

The hallmark of the concealment cases is the concealment of a fact that may have been material to the principal, and might have influenced the principal's conduct of the transaction.

This rule, requiring a broker to act in good faith towards his principal, places him under a legal obligation to make full, fair and prompt disclosure to his employer of all facts within his knowledge which are or may be material to the matter in connection with which he is employed. When a real estate broker is employed to sell or find a purchaser for land, he is bound to disclose to his principal any fact or circumstance known to him material to the transaction which might influence the principal in the conduct of the transaction. Any concealment from the principal of material facts known to the agent will forfeit the agent's right to compensation for his services. Hershey v. The Keyes Company, 209 So.2d 240 (1968)

Mr. Lurie's concealment of his attempts to promote a competing bid to PNC Bank following Seller's rejection of such bid, and his concealment of his continued marketing of the Galleria Plaza property following Seller's order to desist, represented concealment not merely of facts that may have influenced Seller's conduct of the transaction, but actions undertaken in direct conflict with Seller's conduct of the transaction, and accordingly Mr. Lurie's actions are distinctly more egregious than the actions of the brokers at issue in the Florida concealment cases.