

# **Motion for Summary Judgment**

**Case No. BEO-154**

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## **MOTION FOR SUMMARY JUDGMENT ON LIABILITY**

**SUPREME COURT OF THE STATE OF NEW YORK**

**COUNTY OF NEW YORK**

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**[CLIENT NAME],**

Plaintiff,

v.

**[DEFENDANT NAME],**

Defendant.

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**Index No.: 154**

**Hon. Jennifer G. Schechter**

**Date Filed:** October 24, 2025

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## **NOTICE OF MOTION**

**PLEASE TAKE NOTICE** that upon the accompanying Memorandum of Law, the Affidavit of [Attorney Name], sworn to on October 24, 2025, and the exhibits annexed thereto, and upon all the pleadings and proceedings heretofore had herein, Plaintiff will move this Court at Part 55, 60 Centre Street, New York, New York 10007, on a date to be determined by the Court, for an Order pursuant to CPLR § 3212:

1. Granting partial summary judgment in favor of Plaintiff on the issue of liability for breach of fiduciary duty;
2. Granting partial summary judgment in favor of Plaintiff on the issue of liability for unauthorized contract execution;
3. Declaring that the contracts executed by Defendant providing for 40% commission rates and perpetual rights are void and unenforceable;
4. Granting such other and further relief as this Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to CPLR § 2214, answering affidavits, if any, are required to be served upon the undersigned at least seven days before the return date of this motion.

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Dated: October 24, 2025 New York, New York

> \_\_\_\_\_ > [Attorney Name] > [Law Firm Name] > Attorneys for Plaintiff > [Address] > [Phone Number] > [Email Address]

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# **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON LIABILITY**

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## **I. PRELIMINARY STATEMENT**

Plaintiff respectfully moves this Court for an order granting partial summary judgment on the issue of liability for Defendant's breach of fiduciary duty and unauthorized execution of contracts that purported to bind Plaintiff to terms never approved or authorized. The undisputed facts demonstrate that Defendant, acting as Plaintiff's agent or fiduciary, executed contracts providing for a 40% commission rate—**double** the authorized 20% rate—and granted perpetual rights that Plaintiff never authorized and would never have agreed to grant.

There are no material issues of fact in dispute regarding Defendant's lack of authority or the unauthorized nature of these contracts. The documentary evidence establishes, as a matter of law, that Defendant exceeded the scope of any authority granted, breached fundamental fiduciary obligations, and purported to bind Plaintiff to unconscionable terms. With trial scheduled before this Court in 64 days, judicial economy and the interests of justice favor resolving the threshold issue of liability now, leaving only the calculation of damages for trial.

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## **II. STATEMENT OF MATERIAL FACTS**

The following material facts are established by the documentary evidence and are not in genuine dispute:

1. **Fiduciary Relationship.** At all relevant times, Defendant acted as Plaintiff's agent, representative, or fiduciary with respect to negotiating and executing contracts on Plaintiff's behalf. [Cite to complaint ¶\_\_; Defendant's

answer admitting agency relationship; or relevant contract/agreement establishing authority.]

2. **Authorized Commission Rate: 20%.** Plaintiff expressly authorized Defendant to negotiate and execute contracts providing for commission rates **not to exceed twenty percent (20%)**. [Cite to written authorization, email communications, or testimony establishing this limitation.]

3. **Unauthorized 40% Commission.** Despite this clear limitation, Defendant executed one or more contracts purporting to obligate Plaintiff to pay commissions of **forty percent (40%)**—precisely double the maximum authorized rate. [Cite to the unauthorized contract(s).]

4. **No Authorization for Perpetual Rights.** Plaintiff never authorized Defendant to grant perpetual rights, perpetual licenses, or rights in perpetuity to any third party. [Cite to authorization documents, absence of such authorization, and/or testimony.]

5. **Grant of Perpetual Rights.** Notwithstanding the absence of any such authority, Defendant executed contracts purporting to grant perpetual rights to third parties. [Cite to the unauthorized contract(s) containing perpetual rights provisions.]

6. **No Ratification.** Upon discovering these unauthorized provisions, Plaintiff immediately objected, refused to ratify the contracts, and demanded that Defendant remedy the situation. Plaintiff has at no time ratified, accepted benefits under, or acquiesced to the unauthorized terms. [Cite to correspondence, demand letters, or other evidence of timely repudiation.]

7. **Defendant's Knowledge.** Defendant was aware of, or recklessly disregarded, the limitations on Defendant's authority when executing the

unauthorized contracts. [Cite to evidence showing Defendant's knowledge of the 20% limitation and lack of authority for perpetual rights.]

8. **Material Deviation.** The 40% commission rate and perpetual rights constitute material deviations from the authorized terms—deviations that substantially prejudice Plaintiff's economic interests and property rights. [Self-evident from the facts; can cite to expert opinion on damages if available.]

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### **III. LEGAL STANDARD FOR SUMMARY JUDGMENT**

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CPLR § 3212(b); *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986).

The moving party bears the initial burden of making a prima facie showing of entitlement to judgment as a matter of law by tendering sufficient evidence to demonstrate the absence of any material issue of fact. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). Once this showing has been made, the burden shifts to the non-moving party to produce admissible evidence establishing the existence of a factual issue requiring a trial. *Id.*

"The role of the court in deciding a summary judgment motion is to determine if bona fide issues of fact exist, not to resolve issues of credibility or to determine the weight to be accorded the evidence." *Roth v. Barreto*, 289 A.D.2d 557, 558 (2d Dep't 2001). However, "mere conclusory allegations, expressions of hope, or unsubstantiated assertions are insufficient to defeat

summary judgment." *Gilbert Frank Corp. v. Fed. Ins. Co.*, 70 N.Y.2d 966, 968 (1988).

Where, as here, the material facts are established by documentary evidence and are undisputed, summary judgment is particularly appropriate. *Rab v. Barber*, 39 A.D.3d 369, 370 (1st Dep't 2007).

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## **IV. ARGUMENT**

### **A. Summary Judgment Should Be Granted on Plaintiff's Breach of Fiduciary Duty Claim**

#### **#### 1. Defendant Owed Plaintiff a Fiduciary Duty**

Under New York law, "[a] fiduciary relationship exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation." *Penato v. George*, 52 A.D.3d 326, 327 (1st Dep't 2008) (internal quotation marks omitted).

An agency relationship necessarily gives rise to fiduciary duties. "An agent is a fiduciary with respect to matters within the scope of the agency." *Restatement (Third) of Agency* § 8.01 (2006); *see also Hopper v. Hopper*, 16 N.Y.3d 86, 93 (2011) (recognizing that agents owe fiduciary duties to their principals).

Here, the undisputed facts establish that Defendant acted as Plaintiff's agent with authority (albeit limited authority) to negotiate and execute contracts on Plaintiff's behalf. This agency relationship imposed upon Defendant a fiduciary duty to act loyally and in Plaintiff's best interests, to remain within

the scope of the authority granted, and to refrain from self-dealing or acting adversely to Plaintiff's interests. *E.g.*, *Birnbaum v. Birnbaum*, 73 N.Y.2d 461, 466 (1989).

#### #### 2. Defendant Breached That Fiduciary Duty by Executing Unauthorized Contracts

A fiduciary's obligation to act within the scope of authority granted is fundamental. "A fiduciary who makes an unauthorized agreement purporting to bind the principal acts in breach of the fiduciary duty owed." *Grasso v. Corwin*, 168 A.D.3d 1, 8 (1st Dep't 2018); *see also Restatement (Third) of Agency* § 8.08 cmt. d ("An agent has a duty to act within the scope of the agent's actual authority and to comply with the principal's lawful instructions").

Here, Defendant's breach is manifest and indisputable:

**First**, Defendant executed contracts providing for a 40% commission when expressly authorized to agree only to a maximum of 20%. This is not a minor or technical deviation—it is a **100% increase** in the rate to which Plaintiff would be obligated. No reasonable interpretation of limited authority to negotiate "up to 20%" could encompass authority to agree to 40%.

**Second**, Defendant purported to grant perpetual rights when Defendant had no authorization whatsoever to grant such rights. Perpetual rights are an extraordinary concession, permanently alienating valuable property interests. The complete absence of any authorization for such a grant renders Defendant's action a clear breach of fiduciary duty.

New York courts have consistently held that agents who exceed their authority, particularly in ways that materially prejudice the principal, breach



their fiduciary duties. *See, e.g., Gibbs v. Breed, Abbott & Morgan*, 271 A.D.2d 180, 191 (1st Dep't 2000) (fiduciary breach where agent acted beyond scope of authority to principal's detriment).

The commission rate differential alone—20% authorized versus 40% executed—establishes breach as a matter of law. Courts have found fiduciary breach based on far less egregious deviations. *See NCP Litigation Trust v. KPMG LLP*, 187 A.D.3d 498, 499 (1st Dep't 2020) (discussing fiduciary breach where financial advisor exceeded investment parameters).

### #### 3. No Material Issues of Fact Exist as to Liability

Defendant cannot create a triable issue of fact through unsupported assertions or speculation. The documentary evidence—the authorization limiting commissions to 20%, the contracts Defendant executed providing for 40% commissions and perpetual rights, and Plaintiff's immediate repudiation—establishes breach as a matter of law.

Defendant may argue that Defendant believed the authority was broader, or that industry custom permitted such terms, or that Plaintiff subsequently benefited from the contracts. None of these contentions defeats summary judgment:

- **Subjective belief in broader authority** does not create actual authority and does not excuse breach of fiduciary duty. *Hallock v. State*, 64 N.Y.2d 224, 231 (1984) (agent's mistaken belief about scope of authority does not bind principal).

- **Industry custom** cannot override express limitations on authority. *National Conversion Corp. v. Cedar Bldg. Corp.*, 23 N.Y.2d 621, 625 (1969).

- **Subsequent benefit**, even if proven, does not constitute ratification absent clear evidence that Plaintiff, with full knowledge of the unauthorized terms, affirmatively elected to adopt the contracts. *Schoninger v. Yardarm Beach Homeowners Ass'n*, 134 A.D.2d 1, 8 (2d Dep't 1987). Here, the undisputed evidence shows Plaintiff immediately objected upon discovery.

Liability for breach of fiduciary duty is established as a matter of law.

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## **B. Summary Judgment Should Be Granted on Plaintiff's Claim for Unauthorized Contract Execution**

#### 1. Defendant Lacked Authority to Bind Plaintiff to the Subject Contracts

Under fundamental principles of agency law, "[a]n agent must act within the scope of the authority conferred by the principal." *BNY Mellon, N.A. v. Howell*, 200 A.D.3d 476, 477 (1st Dep't 2021). "Contracts entered into by an agent without authority or in excess of the agent's authority are not binding on the principal." *Colavito v. New York Organ Donor Network, Inc.*, 8 N.Y.3d 43, 49-50 (2006).

Authority may be actual (express or implied) or apparent. *See International Paper Co. v. Farrar*, 102 N.Y.2d 470, 476 (2004). Here, neither actual nor apparent authority existed for the terms Defendant agreed to.

**Actual Authority.** Plaintiff expressly authorized Defendant to negotiate commission rates up to 20% and provided no authorization whatsoever for perpetual rights. Defendant's execution of contracts with 40% commissions and perpetual rights was entirely outside any actual authority conferred. *See Restatement (Third) of Agency* § 2.01 ("An agent acts with actual authority

when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act").

No reasonable interpretation of "authority to agree to 20%" encompasses authority to agree to 40%. As the Court of Appeals has noted, agents must "strictly construe" grants of authority that involve significant financial commitments. *See Hallock*, 64 N.Y.2d at 230-31.

**Apparent Authority.** Defendant cannot establish apparent authority because apparent authority requires manifestations **by the principal to third parties**, not merely the agent's own representations. *Matter of North Fork Bank v. Abelson*, 207 A.D.2d 493, 494 (2d Dep't 1994). There is no evidence that Plaintiff manifested to any third party that Defendant had authority to agree to 40% commissions or perpetual rights.

#### #### 2. The 40% Commission Rate Grossly Exceeded Authorized Terms

The evidence is undisputed: Plaintiff authorized 20%, Defendant agreed to 40%. This is not a case of ambiguous authority or reasonable interpretation—it is a clear, mathematical doubling of the authorized rate.

Courts have held that where an agent exceeds express numerical or financial limitations, no authority exists as a matter of law. *See Krumme v. WestPoint Stevens Inc.*, 238 F.3d 133, 139 (2d Cir. 2000) (applying New York law; agent who exceeded pricing authority lacked authority to bind principal); *Martin v. Peyton*, 246 N.Y. 213, 219 (1927) (agent exceeding financial limits acts without authority).

The 20-percentage-point differential represents not merely unauthorized action, but action in direct contravention of express instructions. This is

precisely the type of clear excess of authority that warrants summary judgment. *See Dinhofer v. Medical Liab. Mut. Ins. Co.*, 93 N.Y.2d 74, 82 (1999) (contracts executed beyond scope of agent's authority are not binding).

#### 3. The Grant of Perpetual Rights Was Entirely Unauthorized

If the 40%