IN RE: Arbitration of

RockGroup Advisors, LLC,

Plaintiff/Claimant,

vs.

Tuxedo Court, LLC,

Defendant/Respondent.

_____/

AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the Exclusive Right of Sale Listing Agreement for Commercial Property regarding the marketing of real property located at 720 Charles Court, S., St. Petersburg, FL 33701 (the "Property") entered into by the above-named parties on December 27, 2018 (the "Agreement"), and having been sworn, having heard the proofs and allegations of Claimant and Respondent at a hearing conducted on January 19, and 20, 2021 (the "Final Hearing") wherein Bruce W. Barnes, Esquire, represented Claimant RockGroup Advisors, LLC ("Claimant" or "RockGroup") and Richard P. Green, Esquire, represented Respondent Tuxedo Court, LLC ("Respondent" or "Tuxedo Court") and having fully reviewed and considered the evidence submitted by the parties, having heard from witnesses called in this cause and having considered the exhibits entered into evidence by the parties, by stipulation or otherwise[1], which included three binders of exhibits labeled Tuxedo Court Exhibits (Stipulated), RockGroup Exhibits (Stipulated) and RockGroup Exhibits (Objected). All of the exhibits were admitted except for Exhibit 18 and pages 002 through 046 of Exhibit 17 of RockGroup Exhibits (Objected) which were withdrawn by Claimant. After due notice of the Final Hearing, which was held and concluded, and being duly informed, I hereby AWARD as follows:

[1] Citations in this Award to documents entered into evidence at the Final Hearing will bear the markings as submitted at the Final Hearing (i.e. C-XX-XXX or R-XX-XXX), reflecting documents submitted by Claimant or Respondent, respectively.

PROCEDURAL HISTORY

Claimant commenced this action through its Complaint dated January 30, 2020, through which Claimant demanded arbitration to establish Respondent's purported breach of the Agreement and the damages arising therefrom. After a prolonged period of vetting of Arbitrator candidates, on or about June 16, 2020, Respondent filed its Answer and Defenses. Respondent also file a two-count Counterclaim asserting that Claimant 1) breached its fiduciary duty to Respondent and 2) breached the Agreement. On or about June 24, 2020, Respondent sought leave to amend its Answer and Defenses and Counterclaim to include a claim for punitive damages. On or about July 31, 2020, Respondent withdrew its Counterclaim and request for leave to amend the Counterclaim. On or about October 5, 2020, Claimant filed its Amended Complaint. On or about October 13, 2020, Respondent filed its Answer and Affirmative Defenses to Claimant's Amended Complaint. In its response to the Amended Complaint, Respondent asserted three affirmative defenses: Void/Voidable Contract, Failure to State a Claim and Unclean Hands. The Amended Complaint and the Respondent's Answer and Affirmative Defenses to Claimant's Amended Complaint are the pleadings upon which this matter was heard.

STIPULATED FACTS

Pursuant to the January 6, 2021 Stipulated Facts submitted by the parties, the parties stipulated to the following facts:

1. RockGroup is a commercial real estate brokerage firm, registered and licensed in the State of Florida.

2. Tuxedo Court is the owner of commercial real property having a street address of 720 Charles Court South, St. Petersburg, Florida.

3. On December 27, 2018, RockGroup and Tuxedo Court entered the Agreement.

4. The Agreement was a single agent, exclusive listing arrangement whereby RockGroup owed Tuxedo Court various duties, including a duty of loyalty and a duty of obedience.

5. At all material times, the lead principal of RockGroup was Alan Marrullier.

6. At all material times, the lead principal of Tuxedo Court was John Owen.

7. RockGroup representatives, aside from Alan Marrullier, who had involvement with the listing were Mark Pfleger, Todd Adams and Kim Gill.

8. In addition to John Owen, representatives of RockGroup also had communications with Martin Evans of Tuxedo Court.

9. Beginning with a letter dated September 5, 2019, from Alicia R. Seward, Esq., counsel for Tuxedo Court to RockGroup, there were a series of written communications between Tuxedo Court, through Ms. Seward, and RockGroup. The communications related to the termination of the Agreement. Excluding the one year tail provision, the Agreement was to expire on its face on December 20, 2019.

10. In November of 2019, a proposed Withdrawal Agreement was prepared by RockGroup and provided to Tuxedo Court. The draft Withdrawal Agreement was never executed by the parties. The parties were not able to reach a resolution regarding the matter.

CLAIMS OF PARTIES

Claimant: RockGroup contends that Tuxedo Court breached the Agreement by attempting to terminate the Agreement without adequate justification. Specifically, RockGroup asserts that there was no bona fide change in circumstances to support a decision by Tuxedo Court to terminate the Agreement. RockGroup further contends that Tuxedo Court otherwise breached the Agreement by failing and refusing to cooperate with RockGroup in marketing the Property. In support of this, RockGroup asserts that Tuxedo Court 1) failed to provide a counterproposal to the offer of Vertica Partners, 2) failed to provide an update to RockGroup regarding its efforts to contact an adjoining property owner regarding her interest in combining her real estate parcel with Tuxedo Court's parcel for marketing purposes and 3) contacted a competing real estate agent during the term of the Agreement as examples of Tuxedo Court's lack of cooperation. Finally, RockGroup asserts that Tuxedo Court breached the Agreement by failing to cooperate in the

implementation of Plan B. RockGroup seeks an award of damages together with its reasonable attorneys' fees and reasonable costs and interest accruing thereupon.

Respondent: Tuxedo Court contends that the Agreement is not a valid contract because Alan Marrullier, the sole managing member of Control Capital, LLC (the manager of RockGroup Advisors, LLC) held only an inactive sales associate license at the time of execution of the Agreement and during most of the term of the Agreement.[2] Tuxedo Court further contends that RockGroup repudiated the Agreement by refusing to cooperate with Tuxedo Court's attempt to exercise its rights under the termination provision of the Agreement. Tuxedo Court additionally asserts that to the extent that Tuxedo Court failed to honor any provision of the Agreement, such acts did not result in any damage to RockGroup. While Tuxedo Court has asserted no affirmative claim for damages, they do assert a claim for reasonable attorneys' fees and costs

ADDITIONAL BACKGROUND FACTS

On December 27, 2018, RockGroup and Tuxedo Court entered the Agreement, which was a single agent, exclusive listing arrangement in which RockGroup would serve as the broker for the Property, which was owned by Tuxedo Court. The Agreement was executed by John W. Owen on behalf of Tuxedo Court LLC and Allan Marrullier on behalf of RockGroup Advisors LLC. Both parties appear to misunderstand the exact nature of their roles for their respective entities as Mr. Owen executed the Agreement as "President" of Tuxedo Court LLC and Mr. Marrullier

[2] While Tuxedo Court relies upon 475.41, Florida Statutes and section 61J2-5.016, Florida Administrative Code to argue that the Agreement is not valid, I do not so find. Tuxedo Court argues two things. First, they argue that because Alan Marrullier's real estate license was inactive at the time of the Agreement and through most of the term of the Agreement, the Agreement was not valid pursuant to 475.41, Florida Statutes. Second, they argue that the Agreement is not valid because RockGroup failed to disclose Control Capital Group LLC's ownership of RockGroup to the Division of Business and Professional Regulation as required by section 61J2-5.016 of the Florida Administrative Code. However, those arguments do not appear to meet the mark. First, RockGroup, not Mr. Marrullier, was the broker pursuant to the Agreement and was licensed at the time of execution of the Agreement and all times thereafter. Second, while section 61J2-5.016 of the Florida Administrative Code address the licensing of representatives of "corporations or partnerships", this provision does not appear to have been updated to fully account for circumstances such as this, where a limited liability company is owned by another limited liability company. Because the regulations cited to not appear to directly invalidate the Agreement, I will not go beyond that express provisions of the regulations to do so.

executed that Agreement as Manager of RockGroup Advisors LLC. In fact, as acknowledged at the Final Hearing, Control Capital Group LLC is the Manager of RockGroup Advisors LLC and Mr. Marrullier is the sole member of Control Capital Group LLC. Further, as noted at the Final Hearing, Florida limited liability companies are typically controlled by managers rather than officers. Notwithstanding the less than perfect completion of the signature blocks of the Agreement, I find that the individuals who executed the Agreement had the appropriate authority to contract on behalf of their respective entities and that the errors in completing the signature blocks of the Agreement do not affect the enforceability of the Agreement as between the parties.

At the Final Hearing, Alan Marrullier testified that he drafted the Agreement. Mr. Marrullier testified that he utilized a form that he had in his possession and completed and/or altered the language of the form to fit the circumstances of the agreement between the parties. As established at the Final Hearing, Mr. Marrullier is not a member of The Florida Bar and does not have a formal legal education. The provisions of the Agreement that are at issue in this dispute are provisions that were either drafted by Mr. Marrullier or portions of the form agreement that were completed or altered by Mr. Marrullier. In short, the provisions at issue are not the unaltered provisions of the form that Mr. Marrullier used to create the Agreement.

The provisions of the Agreement that are at issue are the following:

> 9. **TERMINATION**: This Contract shall terminate as of the Termination date [sic] unless sooner terminated as provided below:
>
> A. If OWNER decides, because of a bona fide change in circumstances, not to sell the Property, this Contract shall be conditionally terminated as of the date OWNER executes a Withdrawal Agreement and pays BROKER a cancellation fee of $_SEE 13.C) BELOW ___.[3] If OWNER contracts for sale to anyone after the agreed early termination date but on or before the original Termination Date, then the early termination provided

[3] For whatever reason, RockGroup, the drafter of the Agreement, chose not to include a liquidated amount as a cancellation fee in the Agreement notwithstanding that the form agreement contained a blank to set out a cancellation fee upon termination of the Agreement.

by this paragraph shall be voidable by BROKER and OWNER shall pay BROKER the compensation stated in paragraph 4, less the cancellation fee paid pursuant to this paragraph.

13. **ADDITIONAL TERMS**

*** * ***

C. IN THE EVENT OF A TERMINATION PER 9.A. ABOVE, OWNER AGREES TO REIMBURSE BROKER FOR MUTUALLY AGREED UPON ITEMIZED DIRECT PROJECT EXPENSES.

The two-day Final Hearing elicited much testimony, all of which has been carefully considered by the undersigned along with all of the documents presented at the Final Hearing. While substantial documentary evidence and testimony was presented at the Final Hearing, the operative facts in this matter are largely not in dispute.

The Agreement provided for a two-prong approach to marketing the Property. Pursuant to the Agreement, the first prong, Plan A, involved marketing the Property without an asking price. The Agreement further provides, that if Plan A produces no acceptable offer, a mutually agreed upon price would be advertised – Plan B. After the parties entered into the Agreement, RockGroup began marketing the Property to various leads without a disclosed asking price.

The relationship between RockGroup and Tuxedo Court appears to have been tepid, at best, from its earliest stages. For example, as far back as February 20, 2019, the parties began discussing the terms of the fully-executed Agreement with, what appears to be some level of discomfort. For example, on February 22, 2019, Tuxedo Court sent RockGroup an email suggesting some changes and clarifications to the Agreement (R4-002). RockGroup responded to Tuxedo Court's February 22, 2019 email by email on March 27, 2019 (R4-001) explaining the terms of the Agreement and suggesting that the proposed changes were not necessary. Notwithstanding this exchange, the parties proceeded to operate under the Agreement without amendment.

RockGroup's marketing effort appears to have ultimately attracted the interest of one party willing to make an actual offer for the Property. On July 3, 2019, Vertica Partners made an offer to purchase the Property for $2 million. Tuxedo Court was dissatisfied with the initial offer from Vertica Partners because they believed it was substantially below the market value and market potential of the Property. Because the initial Vertica Partners offer was so far below Tuxedo Court's expectations, Tuxedo Court elected to refrain from making a counteroffer to Vertica Partners. RockGroup continued to cultivate the interest of Vertica Partners and, after communicating Tuxedo Court's dissatisfaction with the initial $2 million offer, on July 17, 2019, Vertica Partners increased its offer to $3 million. The Vertica Partners' offers reflected a price per square foot of approximately $40 to $60 per square foot while Tuxedo Court believed the Property was worth at least $115 per square foot.

Around the time of the Vertica Partners offers, the relationship between RockGroup and Tuxedo Court appears to further deteriorate. This conclusion is supported by, among other things, a July 18, 2019 email from John Owen to Alan Marrullier in which Mr. Owen indicated his displeasure with the Vertica Partners offers and with RockGroup (R8-001).[4] In this July 18, 2019 email, Mr. Owen suggested that Vertica Partners' offers were substantially below the value of the Property. In this July 18, 2019 email, Mr. Owens further indicated that he believed that Vertica Partners was seeking to "rip off" Tuxedo Court with an offer that he deemed to be "a waste of time". In this communication, Mr. Owen further question whether RockGroup was "distracted by something" and why they were "wasting time on irrelevant information while you [Alan Marrullier -- RockGroup] don't provide me [John Owen – Tuxedo Court] the information I ask for." *Id*. Mr. Owen closed the email with "[o]bviously, I don't feel like talking to you today." *Id*.

[4] Mr. Owens also testified as to his exasperation with the market reaction to the Property offering and RockGroup's approach to marketing the Property. He expressed frustration with a number of specific issues, including the fact that he learned about real estate transactions in the area of the Property from third parties rather than from RockGroup --- Tuxedo Court's own broker.

From the documents and testimony, it appears that after the Vertica Partners offers, RockGroup continued to market the Property without an asking price. During this time, the relationship between the RockGroup and Tuxedo Court, as reflected by the communications, remained tense. For example, on August 14, 2019, Martin Evans of Tuxedo Court sent an email to Marc Pfleger of RockGroup requesting information regarding comparable sales data. The email reflects that Tuxedo Court had provided RockGroup with recent information about real estate in close proximity to the Property with a request for further analysis and information. Mr. Evans notes in the email that "[h]opefully, we can keep this list updated on a consistent time frame." (C16-025). In the email, Mr. Evans also notes that the Agreement provides a bonus to RockGroup if the Property sold for more than $7.5 million. *Id.*

The documentary evidence suggests that the parties met by phone on August 15, 2019 to "brainstorm" about alternative strategies to maximize the potential of the Property. (C15-056). Further, the documentary evidence suggests that earlier on August 15, 2019, representatives of RockGroup communicated by internal group email regarding the potential listing price of the Property. (R9-001). In this internal email exchange, the staff of RockGroup appears to suggest that the fair market value of the Property ranged from $6.25 million to $6.75 million. *Id*. Representatives of Tuxedo Court do not appear to have been included in this email exchange. *Id*.

According to the testimony of John Owen, sometime in in the latter half of August, he began to consider terminating the Agreement. Mr. Owens testified that he had lost confidence and trust in RockGroup for a variety of reasons, including what he perceived to be 1) RockGroup's lack of attention to and communication about real estate activity in the area surrounding he Property, 2) Tuxedo Court's impression that RockGroup provided information about the value of the Property to prospective purchasers that was inconsistent with Mr. Owen's perception of the value of the Property and 3) RockGroup's insistence that Tuxedo Court provide a counteroffer to the Vertica Partners offers which Mr. Owens believed were far too low to do so.

According to Mr. Owen's testimony, sometime between August 15, 2019 and early September 2019, Tuxedo Court decided that it was no longer interested in selling the Property. Mr. Owen testified that Tuxedo Court sought legal counsel, consulting Alicia Seward of Seward Law Office, P.A. regarding the matter. Mr. Owen further testified that Tuxedo Court did not sell the Property and, as of the date of the Final Hearing, still owned the Property.[5]

On or about September 5, 2019, counsel for Tuxedo Court dispatched a letter to RockGroup through which Tuxedo Court "proposed" to terminate the Agreement. (R10-001). After quoting various provisions of the Agreement, counsel for Tuxedo Court suggested September 30, 2019 as the termination date and proposed to reimburse RockGroup for "mutually agreed upon expenses between $8,000 and $12,000 . . . not to exceed $15,000." Id. Through the September 5, 2019 letter, counsel for Tuxedo Court also requests that RockGroup release all marketing materials to Tuxedo Court upon termination of the Agreement.[6] Id.

Although Mr. Marrullier testified that the September 5, 2019 letter from counsel for Tuxedo Court was the first time he learned that Tuxedo Court was dissatisfied with the relationship between RockGroup and Tuxedo Court, as noted above, from the written communications between the parties and the testimony elicited during the Final Hearing, it appears that sometime during July 2019, the cooperative relationship between the parties required of the Agreement ceased to exist. Mr. Marrullier further testified that upon receipt of the September 5, 2019 letter, RockGroup ceased marketing the Property.

On September 16, 2019, on behalf of RockGroup, Alan Marrullier responded to the September 5, 2019 letter. (R17-013). In this September 16, 2019 email, Mr. Marrullier describes

[5] RockGroup did not contest Tuxedo Court's assertion at the Final Hearing that it retained ownership of the Property.

[6] Mr. Owen testified that he requested the marketing materials not because he wanted to use them to market the property without RockGroup but because he did not want the materials publically available because of their content suggesting a lower market value for the Property than Tuxedo Court wished to broadcast. Mr. Owen's desire to control the marketing materials is consistent with his assertion that through the marketing materials, RockGroup provided price guidance to prospective purchasers that was inconsistent with Tuxedo Court's view of the value of the Property.

RockGroup's efforts to market the Property. *Id*. Counsel for Tuxedo Court sent a response letter dated September 24, 2019 again indicating that Tuxedo Court sought to terminate the Agreement (R12-001). Through the September 24, 2019 letter, counsel for Tuxedo Court requested that RockGroup provide a Withdrawal Agreement (as contemplated in the Termination provision of the Agreement) and an itemization of the direct project expenses that RockGroup incurred while marketing the Property. *Id*.

By internal email dated September 28, 2019, Mr. Marrullier noted to his RockGroup colleagues that while Tuxedo Court had a contractual right to terminate the Agreement, he did not believe that they had a "bona fide" change in circumstances. *Id.* Mr. Marrullier suggested that instead, Tuxedo Court sought to "complete another transaction." *Id.* This fear that Tuxedo Court was going to sell the Property and cut RockGroup out of a real estate commission appears to drive RockGroup's responses to Tuxedo Court.

RockGroup responded to Tuxedo Court counsel's September 24, 2019 letter by letter dated October 1, 2019 through which RockGroup requested a detailed explanation of the "bona fide change in circumstances" leading to Tuxedo Court's exercise of the termination provision of the Agreement along with "any relevant documentation supporting the change in circumstances." (C9-007). Counsel for Tuxedo Court responded by letter dated October 18, 2019 suggesting that that Agreement did not require Tuxedo Court to provide a detailed explanation as requested by RockGroup. (C9-008). Counsel for Tuxedo Court further demanded that RockGroup forward a draft Withdrawal Agreement and itemized direct project expenses no later than 5 p.m. on November 1, 2019. *Id.*

RockGroup responded by way of a November 4, 2019 letter enclosing a draft Withdrawal Agreement and a document entitled Broker Expenses/Cancellation Fee. The Broker Expense/Cancellation Fee document disclosed fees totaling $61,950.00 (C9-009; R14-001-R14-021). The cancellation fee in the Broker Expense/Cancellation Fee document consisted largely

of charges for professional time rather than direct expenses as contemplated by the Agreement.[7] *Id.*

Counsel for Tuxedo Court responded to RockGroup by letter dated November 27, 2019 contesting the propriety of the $61,950.00 cancellation fee and various provisions of the Withdrawal Agreement. (C9-011-C9-012). After expressing Tuxedo Court's concerns, Tuxedo Court's counsel advised RockGroup that Tuxedo Court would "continue to allow" RockGroup to market the Property through the original term of the Agreement, December 20, 2019 but would not renew the Agreement. *Id*. At this time, less than 30 days remained in the term of the Agreement.

The parties engaged in additional communications that were not productive nor germane to the dispute in this proceeding. The parties never executed a Withdrawal Agreement and were unable to resolve the dispute between them. RockGroup generated no additional offers for the Property.

CONCLUSIONS

To recover for breach of contract, a claimant must demonstrate (1) the existence of a valid contract; (2) a material breach; and (3) that it suffered damages. *Friedman v. New York Life Ins. Co*., 985 So. 2d 56, 58 (Fla. 4th DCA 2008). The party asserting a breach of contract has the burden of proof to prove their claim by the preponderance of the evidence. *In re Gulf Northern Transport, Inc.*, 340 B.R. 111, 120 (Bankr. MD. Fla. 2006). In this instance, RockGroup failed to meet its burden of proof with respect to its cause of action for breach of contract.

Indeed, RockGroup has asserted that Tuxedo Court breached the Agreement by attempting to terminate the Agreement without adequate justification. However, pursuant to the terms of the Agreement, Tuxedo Court had the right to terminate the Agreement upon its decision

[7] At the Final Hearing, Alan Marrullier testified that his understanding of the term "direct project expenses" in paragraph 13 C. of the Agreement meant out-of-pocket expenses, rather than charges for professional time. This testimony is consistent with the plain meaning of this phrase.

to refrain from selling the Property because of a bona fide change in circumstances. The Agreement provides no guidance as to what constitutes a "bona fide change in circumstances" and neither party provided any authority as to what constitutes a "bona fide change in circumstances". However, in this instance, as noted above, Mr. Owen testified that Tuxedo Court lost trust in RockGroup and decided not to sell the Property. While Mr. Owen did not directly testify specifically that the decision to refrain from selling the Property was because of disappointed expectations as to the value of the Property, Tuxedo Court's actions indicate that disappointment as to the market's reaction to the Property may have played a part in the decision to discontinue marketing the Property. And, while counsel for Tuxedo Court's attempt to exercise Tuxedo Court's termination right under the Agreement was inartful, at best, counsel did communicate Tuxedo Court's interest in exercising its right to terminate the Agreement.

RockGroup failed to refute the justification for termination put forth by Tuxedo Court and, failed to establish anything more than unsubstantiated suspicion that Tuxedo Court's motivation for terminating the Agreement was to enter into another transaction as to the Property outside the Agreement. However, if that was Tuxedo Court's motivation, RockGroup failed to establish this by competent evidence. Additionally, it is undisputed that, at least as of the close of the Final Hearing, Tuxedo Court remained the owner of the Property. It clearly did not do so.

The termination provision of the Agreement set out in paragraphs 9.A. and amplified by paragraph 13.C. of the Agreement contemplates cooperation between the contracting parties and is conditioned upon certain agreements. For example, paragraph 13.C. requires the parties to agree upon the itemized direct project expenses to be paid to the broker upon termination of the Agreement. It further requires the execution of a Withdrawal Agreement. In this instance, Tuxedo Court's attempt to exercise the termination provision set out in paragraphs 9.A. as amplified by paragraph 13.C. of the Agreement was met with resistance. The parties were unable to agree upon the expenses to be paid to RockGroup and upon the terms of a Withdrawal Agreement. Because the parties were unable to reach agreements as to the conditions precedent to

termination, as time ran out on the Agreement, Tuxedo Court ultimately abandoned its attempt to terminate the Agreement and allowed the Agreement to expire by its own terms.

RockGroup further contends that Tuxedo Court otherwise breached the Agreement by failing and refusing to cooperate with RockGroup in marketing the Property. In support of this, RockGroup asserts that Tuxedo Court 1) failed to provide a counterproposal to the offer of Vertica Partners, 2) failed to provide an update to RockGroup regarding its efforts to contact an adjoining property owner regarding her interest in combining her real estate parcel with Tuxedo Court's parcel for marketing purposes and 3) contacted a competing real estate agent during the term of the Agreement as examples of Tuxedo Court's lack of cooperation. However, these actions, neither individually or nor collectively amount to a breach of the Agreement.

First, while the provisions of paragraph 3.L. of the Agreement required Tuxedo Court to cooperate with RockGroup, such cooperation did not require Tuxedo Court to propose a counteroffer. In this instance, Tuxedo Court declined to do so because the offers were less than 50 percent of what RockGroup and Tuxedo Court believed to be the market value of the Property. Second, the duty of cooperation in the Agreement (nor any other duty set out the Agreement) did not expressly or implicitly require representatives of Tuxedo Court to recruit adjoining property owners to sell her adjoining real estate parcel. In fact, a representative of RockGroup testified that RockGroup could have contacted the adjoining parcel owner but thought Mr. Owen was better situated to do so because he had prior contact with the adjoining property owner. And finally, nothing in the Agreement forbade representatives of Tuxedo Court from speaking with other real estate professionals.[8]

RockGroup also asserts that Tuxedo Court breached the agreement by refusing to permit RockGroup to implement Plan B. However, this assertion is not supported by the evidence. As

[8] Mr. Owen testified that Tuxedo Court began contacting other real estate professionals to gather information about real estate activity in the area because RockGroup failed to provide this information to them.

noted above, on August 15, 2019, representatives of RockGroup and Tuxedo Court participated in a brainstorming conference call. (C15-056). Also on that day, representatives of RockGroup participated in internal discussions regarding an asking price for the Property. (R9-001). The parties did not provide substantial evidence of further communications between the parties after the August 15, 2019 communications. Shortly after those communications – on or about September 5, 2019 -- Tuxedo Court sent the first letter suggesting termination of the Agreement.

The August 15, 2019 communications reflect that as of that date, an asking price for the Property, a condition precedent to commencing Plan B, had not yet been determined. Additionally, RockGroup offered no direct evidence of Tuxedo Court's refusal to commence Plan B. Instead, both parties offered evidence of Tuxedo Court's attempts to exercise the termination provisions of the Agreement. Given this, RockGroup has failed to establish that Tuxedo Court prevented the implementation of Plan B.

RockGroup has not established any action or inaction by Tuxedo Court that forms the basis of a valid cause of action for breach of the Agreement. Accordingly, RockGroup failed to establish that Tuxedo Court breached the Agreement. Given that RockGroup has failed to establish its cause of action for breach of contract, it is unnecessary to evaluate Tuxedo Court's defenses except as already set out above.

AWARD

It is therefore AWARDED, as follows:

1. RockGroup has failed to meet its burden of proof and, accordingly, has failed to establish that Tuxedo Court breached the Agreement. Accordingly, RockGroup shall take nothing in its cause of action against Tuxedo Court.

2. The Agreement provides that the prevailing party on the significant issues in this case shall be entitled to recover the fees and costs it has incurred, including reasonable attorneys' fees and costs. I find that based upon the foregoing, Tuxedo Court is the prevailing party on the

significant issues in this proceeding and is entitled to recover the fees and costs it has incurred, including reasonable attorneys' fees and costs.

3. This Award fully resolves and determines all issues, claims and defenses submitted in the above-styled proceeding on the merits. All claims not expressly granted herein are hereby denied.

4. The undersigned Arbitrator retains jurisdiction to consider Tuxedo Court's request for attorneys' fees and costs. Tuxedo Court shall have 30 days from the date of issuance of this Award to submit its request for attorneys' fees and costs, together with affidavits in support of any request for attorneys' fees and costs.

I, Kathleen McLeroy, do hereby affirm upon my oath as arbitrator that I am the individual who executed this instrument which is my Award.

DONE AND ORDERED at Tampa, Florida on March 3, 2021.

/s/Kathleen McLeroy
Kathleen McLeroy, Arbitrator
kmcleroy@carltonfields.com
(also copy nkapadia@carltonfields.com)

I hereby certify that this Award has been sent by email to the below counsel of record below on this 3rd day of March, 2021.

cc: Bruce W. Barnes, Esquire
bwbarnes@tampabay.rr.com
Counsel for RockGroup Advisors, LLC

Richard P. Green, Esquire
rgreen@llw-law.com
Counsel for Tuxedo Court, LLC