

Common law best. Lease next best
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CASE STUDY: EXCLUSIVE LEASING AGENCY
FOR PRESENTATION TO THE REAL ESTATE BOARD
OF THE CITY OF NEW YORK
BROKERAGE - "THE DANGER ZONES"

By: John B. Wood, Esq.
March 12, 1987

- ① see copy
- ② CLC
- ③ for CPTA's summary
- ④ how many brokers are, sys. practice

- ⑤ how many salespeople are, sys. practice
- ⑥ how many agents are, sys. practice
- ⑦ how many attorneys are, sys. practice
- ⑧ who's def. of erholitant full of attorney - I think my full of it is in is very reasonable.

(DATE)

Beautiful about
Employment Section
① who employ
② focus on property
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ADDRESS

1. The undersigned ("Owner"), the owner of the lessee's interest in, to and under those certain leases and amendments thereto (collectively, the "Lease") between _____ ("Landlord") and Owner, dated _____, covering the _____ (th) Floor (the "Property") in the building commonly known and referred to as 175 Water Street, New York, New York, (the "Building"), hereby grants _____ ("Agent") the exclusive right (except as otherwise provided herein) to obtain tenants for designated portions of the Property. In connection therewith, Agent shall conduct the following activities:

if Bldg space - no emp.
if other space under other lease - no emp.

(a) advise Owner in the promotion and advertising of the Property, including the development and implementation of marketing strategies;

(b) assist Owner in the negotiation of leases, including, without limitation, the preparation of tenant improvement work letters, if any, and investigation of tenants' financial conditions;

Careful about giving property to about backlotors - to know can be done by me in a timely manner

(c) undertake such other activities as is customary for a leasing agent, including placing of advertisements in New York City real estate publications, direct mailings to brokers and potential tenants in the community, canvassing of needs of potential tenants and advertising in trade publications which are subscribed to by target potential tenants (provided that all advertisements in publications shall be at Owner's direction and Owner's cost provided, however, the same shall be offset (recouped by Owner) from any commissions earned hereunder by Agent);

(d) cooperate with all co-brokers and sub-brokers to obtain tenants and promptly submit all offers to Owner;

(e) obtain the consent of Owner with respect to the rental rates and the terms of all agreements entered into by Agent with co-brokers in connection with the Property; and

(f) provide the active involvement and the services at all times of Burton G. Hollenbeck and Garrett R. Bowden.

2. A. The initial term of this Agreement (the "Initial Term") shall commence as of the date hereinabove provided and shall continue for a period of sixty (60) days and thereafter may be cancelled by either party to this Agreement upon ten (10) days prior written notice given by one party to the other.

B. Agent agrees that it shall not accept or maintain any funds, whether by deposit or otherwise, paid by tenants or prospective tenants and shall direct that such funds be paid to Owner.

3. A. For purposes of this paragraph the following terms shall have the following definitions:

(i) "Non-Commissionable Lease" shall mean any lease entered into (a) with any of the individuals or entities listed on Schedule C (the "Listed Tenants") or (b) with Owner, Agent or any affiliate or successor of any of them;

(ii) "Commissionable Lease" shall mean each lease entered into other than a Non-Commissionable Lease; and

(iii) "Fee" shall mean the sum of the products resulting from the application of the rates set forth on Schedule B annexed hereto, to the annual fixed rentals (defined in paragraph 4 of this Agreement) during the stated term thereof.

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B. If, during the term of this Agreement, any space in the Property is leased (other than by a lease constituting a Non-Commissionable Lease for which no commission or other compensation shall be payable), to any person, firm or entity, Owner agrees to pay Agent and Agent agrees to accept in full payment for all services rendered, whether or not Agent is the procuring cause of such leasing, a commission computed as follows:

(i) for each Commissionable Lease for which Agent is the sole procuring cause, one (1) Fee shall be payable to Agent; and

(ii) for each Commissionable Lease for which one or more brokers or Owner are a procuring cause, one-half (1/2) Fee shall be payable to Agent and one (1) Fee shall be payable to the other broker or shared with the other brokers.

C. In the event Agent procures a proposed tenant which is accepted by the Landlord and results in a cancellation or surrender of the Lease, or portions thereof, Agent shall be entitled to a commission calculated in accordance with Paragraph 3B hereof; except that the annual fixed rental shall be deemed to be the rentals then being paid for the portion of the space so cancelled or surrendered net of any payments made or concessions given by Owner to Landlord or to such proposed tenant, including any costs associated with fix up expenses or otherwise. No commission or other compensation shall be payable to Agent for any increase in space or any increase in rentals or by reason of any renewals or the extension of the term of any lease or for any lease for which Owner is the procuring cause.

D. Any commission paid pursuant to this Agreement shall be considered to cover any and all out-of-pocket administrative and overhead expenses incurred by Agent in connection with the leasing of the Property and the performance of its obligations hereunder. Unless otherwise agreed to by the parties, and except as otherwise provided herein with respect to advertising expenses in publications previously approved by Owner, Agent will not be entitled to receive reimbursement from Owner for any expense incurred by Agent whatsoever.

4. For the purposes of this Agreement, "annual fixed rent" shall mean the aggregate base rental payable to Owner by the tenant under a lease during each twelve month period of the term of such lease, exclusive or net of the following amounts: (a) amounts payable, by reason of rent inclusion or otherwise, for electricity, or after hours utilities, utilities services, heat and/or air-conditioning or other services; (b) real estate tax escalation adjustments; (c) operating expense, percentage rent or

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wage rate escalation adjustments, cost of living increases or any other escalation adjustments or lease cancellation payments; (d) any rent paid or credited by Owner to a tenant by reason of Owner's retaining as subtenant or otherwise any portion of the premises demised to such tenant; (e) with respect to extraordinary construction work, repairs and/or decorating (or other work) which Owner has agreed to perform for such tenant, any amounts (x) undertaken to be paid by Owner to the tenant, or (y) given as an allowance to the tenant (either by way of a credit against rentals or in a lump sum); (f) any moving costs of tenant paid by Owner or credited to tenant; and (g) any other credits given by Owner to tenant against rent for any reason, including but not limited to, rent concessions. With respect to any lease which provides for adjustments in annual fixed rent, if the annual fixed rent payable during any portion of the term of the lease is not determinable on the date the Conditions (as defined in Paragraph 5) have been fulfilled, the annual fixed rent during such portion of the term of the lease shall be deemed to be at the annual rate payable during the year immediately preceding such portion of the term of the lease. If any overpayment in commissions shall have been made by Owner, such overpayment shall be repaid promptly to Owner and if not so repaid, Owner may deduct the same from any other amounts due to Agent. Any underpayment of commission installments to Agent shall be promptly paid to Agent in the manner and at the times provided in Paragraph 5. In the event of less than a twelve month period at the end of any lease term, such annual fixed rent shall be apportioned.

5. A. Any commission due Agent shall be deemed earned in full and shall be payable only upon the satisfaction of all of the following conditions (the "Conditions"):

(a) (i) a written lease for the applicable space in form reasonably satisfactory to Owner and Owner's attorneys is unconditionally executed and delivered by Owner and the tenant and (ii) the security deposit, if any, and advance rent required to be paid under such lease at the time of its execution is paid by the tenant;

(b) the term of the lease commences; and ✓

(c) the tenant, under such lease, enters into possession of the leased premises and thereafter pays the second installment of the annual rent required to be paid pursuant to such lease or assignment after entering into possession.

OK work constitutes conduct by business must be specified

2nd rent point

B. Owner agrees to pay each commission, if earned as hereinabove provided, one-third (1/3rd) within ten (10) days after satisfaction of Conditions, one-third (1/3rd) six (6) months after the first commission payment and one-third (1/3rd) six (6) months after the second commission payment; provided in each instance, the tenant is not at the time for payment of each installment in monetary or other material default under the respective lease.

C. If for any reason whatsoever (a) the tenant does not take possession of the demised premises and commence the payment of rent (other than deposits of rental called for under the lease prior to the commencement of the regular periodic installments of rental), or (b) for any other reason whatsoever, including but not limited to, acts, omissions, negligence or the willful default of Owner, its agents, employees or representatives, or otherwise, a lease shall not be entered into between the Owner and a tenant, then in any such event, no commission or brokerage, or any portion thereof, shall be deemed to be due, payable or earned, or shall be paid to Agent or any other broker by the Owner, and the Owner is and shall be relieved from liability for the payment of any and all commissions, claims or charges whatsoever in respect of such transaction. It is expressly agreed that Owner shall have the unqualified right, in its sole and absolute discretion, to refuse to enter into any lease with a tenant for any reason whatsoever without incurring any obligation to Agent or any other broker for the payment of commissions or otherwise.

6. Agent may employ or use co-brokers or sub-brokers acceptable to Owner, pursuant to agreements reasonably acceptable to Owner, to obtain tenants for the Property. With respect to any prospective lease or tenant, Owner may request Agent, as Agent for Owner (or in such other capacity as the parties may agree), to enter into agreements directly with such brokers on terms approved in advance in writing by Owner. Such co-brokers or sub-brokers shall be paid by Owner upon terms and conditions agreed to by Owner and such co-brokers or sub-brokers. Owner agrees to conduct through or apprise Agent of all negotiations.

7. Agent shall promptly submit all inquiries, offers and applications which it receives for space in the Property to Owner, setting forth all details with respect thereto, and will keep Owner advised, in writing, promptly, of all inquiries, applications and offers which it has received or is soliciting with the names and addresses of prospective tenants involved, and the names and addresses of any inquiring brokers. Agent shall not execute any lease on behalf of Owner or commit Owner to make any lease. Agent shall supply Owner with such other reports and

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information with respect to the leasing program as Owner may reasonably request.

8. Agent shall submit monthly (and within ten days after the date of expiration or earlier termination of this Agreement) to Owner a written list of all prospective tenants for the Property to whom Agent represents it has presented the Property or with whom it conducted active negotiations on specific terms. Such list shall set forth the date, times and location of such negotiations, all details with respect to the subject matter thereof, the proposed space to be leased, the name of the person with whom such negotiations were conducted and the outcome of such negotiations. Such list shall not contain any names with whom active negotiations were not conducted within six (6) months prior to the expiration or earlier termination of this Agreement. If within three (3) months after the expiration or earlier termination of this Agreement, Owner shall lease any space to any tenant(s) whose name appears on the list furnished within ten (10) days after the expiration or earlier termination of this Agreement, Agent shall be entitled to a commission computed as if this Agreement had not expired or been terminated, except that Owner shall not, in any event, pay any commission on account of any Non-Commissionable Lease.

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9. Agent agrees to indemnify Owner and hold it harmless, to the extent of commissions paid or payable by Owner from any liability, cost or expense, including reasonable attorney's fees and disbursements incurred by reason of any claim made against Owner by any person or entity for commission, compensation or damages for loss of commission by reason of any act or statement made by Agent. In the event any claim is made or suit instituted on a particular lease transaction under which Owner claims the benefit of the foregoing indemnification, then

Most reasonable indemnity

- (a) Owner shall give Agent immediate notice thereof in writing;
- (b) Agent shall have the right to defend against such claim or action by counsel of its own choosing, provided such counsel is reasonably satisfactory to Owner; and
- (c) Agent shall not settle any claim which exceeds Agent's liability hereunder without Owner's consent.

10. This Agreement sets forth the entire understanding between the parties hereto and cannot be changed except in writing signed by both parties.

11. This Agreement shall be construed in accordance with the laws of the State of New York and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns except that Agent shall have no right to assign this Agreement without the prior written consent of Owner and any such purported assignment shall be null and void.

12. Any notices required or permitted to be given by either party under this Agreement shall be in writing and sent by registered or certified mail, postage prepaid, return receipt requested and addressed as follows:

To Agent at: [ADDRESS]

To Owner at: [ADDRESS]

Notices shall be deemed given when so mailed. Either party may change its address for notices by giving notice thereof to the other party pursuant to this Paragraph.

If the foregoing is in accordance with your understanding, kindly so indicate by signing and returning a duplicate original of this letter whereupon the same shall constitute an agreement between Owner and Agent.

Very truly yours,

By: _____
Partner

Accepted and Agreed to:

By: _____
Senior Vice President

SCHEDULE A

[Schedule of designated portions of the Property]

SCHEDULE B

<u>Annual Fixed Rental</u>	<u>Rate (%)</u>
Lease Year 1	5%
Lease Year 2	4%
Lease Year 3	3½%
Lease Years 4-6	1½%

The "Rates" shall be prorated for the last Lease Year in a term constituting less than twelve (12) months.

SCHEDULE C

1. Peter Andel;
2. Northwest Mutual Life;
3. Peter Hurst Organization;
4. Thomas Nationwide; and

together with any affiliates or related individuals or entities of any of the foregoing.