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'Morpheus' and the Clear Language Rule: NY Court Limits Broker Fees

By Ian Weiss
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When a brokerage contract states the broker is owed fees for its client's transactions, does that include transactions its client procures entirely on its own, without any help from any broker? Should the court enforce the plain meaning of the contract's broad language and award the broker a windfall fee for nothing?

In New York, these questions implicate a special rule of contract construction that the Court of Appeals adopted in *Morpheus Capital Advisors LLC v. UBS AG, 23 N.Y.3d 528 (2014)*. This article reviews the Morpheus decision and its progeny, including recent developments that clarify the protection Morpheus affords to brokers' clients.

In Morpheus, the Court of Appeals endorsed prior Appellate Division caselaw that drew a "dichotomy" between two rights that a contract could grant a broker: an "exclusive agency" and an "exclusive right to sell." A contract that grants an "exclusive agency"—such as by designating the broker the client's "exclusive" broker—entitles the broker to a fee for transactions that were procured by the broker or by any other broker.

A contract that grants the broker an "exclusive right to sell," on the other hand, goes further by also entitling the broker to a fee for any transaction its client procures independently, without using any broker. Thus, only by granting the broker an "exclusive right to sell" does the client "forfeit the right to directly convey its own property to a third party without incurring a brokers fee."

Reasoning that "an owner's freedom to dispose of her own property should not be infringed upon by mere implication," the court held that a contract can only grant a broker an exclusive right to sell through "an affirmative and unequivocal statement" that "clearly and expressly provide[s] that a commission is due upon sale by the owner or exclude[s] the owner from independently negotiating a sale."

Thus, a client who independently procures its own transaction owes no brokerage fee unless its brokerage contract clearly and expressly states the client either must pay fees for or must not make any transactions that it procured independently. Pursuant to that rule, Morpheus held that a broker was not entitled to any fee for its client's independently procured transactions, even though the contract broadly stated the broker

"shall have the exclusive right to solicit counterparties for any potential Transaction" and that the broker "shall receive a Success Fee payable upon the closing of the Transaction."

Following Morpheus, the First Department has likewise held that brokers were not entitled to fees for their clients' independently procured transactions in cases where the contracts broadly stated "[i]f the undersigned... obtains any apartment(s)/property... listed below,... then [the] undersigned agrees to pay a Broker's Commission," see *Miron Props., LLC v. Eberli,* 126 A.D.3d 479 (1st Dep't 2015); "[t]he [client] shall pay [the broker], due at close of each transaction, and as a condition to each close,... a cash fee," see *Alta Cap. Partners Int'l LLC v. Parsons Cap. LLC,* 155 A.D.3d 493 (1st Dep't 2017); "[f]or each Transaction consummated during the term of this Agreement or within eighteen months following the termination of this Agreement, Client agrees to pay [Broker] a success fee," *Silvergrove Advisors, LLC v. Crosswing Holdings LLC*, 197 A.D.3d 1057 (1st Dep't 2021); and "if the Company consummates the Transaction or enters into an agreement pursuant to which the Transaction is subsequently consummated, the Transaction Fee will be a minimum of $2 million," see *Cantor Fitzgerald & Co. v. ObvioHealth Pte Ltd*., 233 A.D.3d 563, 563-64 (1st Dep't 2024).

In those cases, the First Department soundly held that none of those contracts granted the broker an exclusive right to sell under Morpheus's stringent requirements.

There has, however, been some confusion about Morpheus's special rule in recent years. In 2019, a broker had the chutzpah to sue its client for a $1,250,000 fee from a mere $100 transaction the client had independently procured, relying on a contract that broadly stated the client would owe certain fees if it made any transactions within a certain time frame. See *GCA Advisors, LLC v. Intersections, Inc.,* Supreme Court, New York County Index No. 656893/2019, Dkt. No. 1. In its defense, the client unfortunately failed to cite Morpheus or to otherwise invoke any special rule concerning the exclusive right to sell, and instead relied on principles that were more familiar but less potent, such as the disfavoring of interpretations that yield absurd results.

That defense failed. The Supreme Court (Masley, J.) reluctantly ruled in the broker's favor after stating on the record, "I don't like this." In affirming that ruling, the First Department did not address Morpheus—because the parties failed to raise it—and instead gave the broker the benefit of the general rule that "[u]nambiguous terms of an agreement between sophisticated parties must be enforced pursuant to their plain meaning." *GCA Advisors, LLC v. Intersections, Inc.,* 230 A.D.3d 975, 975 (1st Dep't 2024).

The anomalous GCA case was quickly exploited by another financial broker, Cantor Fitzgerald, in another broker-fee dispute. Dubiously relying on GCA as precedent, Cantor argued that Morpheus merely means that, to grant an exclusive right to sell, a contract must somehow convey a clear intent to do so. See, e.g., *Cantor Fitzgerald & Co. v. ObvioHealth Pte Ltd.*, Supreme Court, New York County Index No. 650486/2024, Dkt. No. 56. The Supreme Court (Schecter, J.) agreed and ruled that Cantor was entitled to a $2 million fee for a $15 million investment in Cantor's client, ObvioHealth, even if ObvioHealth had procured that investment entirely on its own.

But that ruling was reversed on appeal: A First Department panel unanimously rejected Cantor's broker-friendly reading of Morpheus and ruled

that ObvioHealth owed no fee for its independently procured investments, notwithstanding the broad language in the parties' contract. See Cantor, 233 A.D.3d at 563-64. Cantor then moved in the Court of Appeals for leave to appeal, asking the court to revisit Morpheus's special rule.

In effort to show leaveworthiness, Cantor claimed that the First Department's application of Morpheus conflicted with a recent Second Department decision, *New York Commercial Realty Group, LLC v. Beau Pere Real Estate, LLC*, 216 A.D.3d 793 (2d Dep't 2023), allegedly creating an interdepartmental split. Cantor's motion remained pending for over nine months, eventually becoming the oldest undecided civil motion on the court's docket.

In July 2025, while Cantor's motion was pending, the Second Department decided yet another broker-fee dispute in *Angelic Real Estate, LLC v. Aurora Properties, LLC,* 239 N.Y.S.3d 252 (2d Dep't 2025). Angelic provides the most thorough judicial analysis of Morpheus and its progeny to date. It approvingly cites the First Department's decisions in Miron, Alta, Silvergrove, and Cantor, confirming there is no interdepartmental split. See Angelic, 239 N.Y.S.3d at 256-58. And, like all four of those prior cases, Angelic held that broad contractual language stating the broker will be owed fees for the client's transactions is insufficient to grant the broker an exclusive right to sell. In Nov. 2025, ObvioHealth notified the Court of Appeals of the Angelic decision. Later that month, the court finally denied Cantor's nine-month-old motion for leave to appeal, thus declining the opportunity to revisit Morpheus.

These developments clarify the importance of the words "affirmative" and "expressly" in Morpheus's special rule: To grant an exclusive right to sell, it is not enough for a brokerage contract to clearly and unequivocally state the broker will be owed fees for any and all of its client's transactions; instead, the contract must expressly and affirmatively spell out either that the client must pay fees for any transactions that it procures independently, or that the client must not procure any transactions independently. See Morpheus, 23 N.Y.3d at 535-36. That is a strict requirement, and brokers' efforts to water it down have not gone well in New York's appellate courts.

One larger lesson from this line of cases is that commercial litigators should not assume every contract dispute is governed by the general rules of contract law. They're called "general" rules for a reason. Now and then, your specific circumstances will trigger a special, unfamiliar, and perhaps even counterintuitive legal rule that turns your case from a lost cause into a slam dunk—or vice versa.

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