

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

EDWIN CARLETON,)	CASE NO. _____
)	
Plaintiff,)	
)	
vs.)	COMPLAINT FOR
)	DECLARATORY JUDGMENT
)	
CHAPMAN MERGER & AQUISITIONS)	
SERVICES, INC. and CARLETON)	
TRANSPORT SERVICE, INC.)	
)	
Defendants.)	
)	

COMES NOW Plaintiff Edwin Carleton ("Plaintiff") and for its Complaint for Declaratory Judgment, states and alleges as follows:

1. At all times material hereto, Defendant Chapman Merger and Acquisitions Services, Inc. ("Chapman") was acting as a real estate broker in the State of Nebraska.
2. At all times material hereto, Defendant Carleton Transport Service, Inc. ("Carleton Transport") was a Nebraska corporation authorized to transact business in the State of Nebraska.
3. At all times material hereto, Carleton Transport's principal place of business was located at 13556 South 220th Street, Gretna, Nebraska 68028.
4. At all times material hereto, Plaintiff was the sole owner of all issued and outstanding shares of stock of Carlton Transport.
5. This action is brought pursuant to NEB. REV. STAT. § 25-21,149 *et seq.*, for the purpose of having this Court declare the rights, status and other legal relations among the parties. Specifically, Plaintiff seeks a declaratory judgment against Chapman, declaring that Chapman is not qualified and entitled to file an action for a commission under a certain agreement between Plaintiff, Chapman and Carleton

Transport and that Chapman is not entitled to a commission under the terms of such agreement.

6. Venue is proper in Sarpy County, since this action involves a contract, the subject matter of which is the listing and sale of certain real property and personal property located in Sarpy County, Nebraska and the performance of such contract was to occur in Sarpy County, Nebraska.

7. On or about December 16, 2014, Plaintiff, Carleton Transport and Chapman entered into a written agreement (the "Listing Agreement") whereby Plaintiff and Carleton Transport, as Seller, granted Chapman, as Chapman, the exclusive right to sell Carleton Transport's business with the asking price of \$5,200,000.00 for all assets of the business. A copy of the Listing Agreement is attached hereto as Exhibit A.

8. The assets of the business include both personal property and real property.

9. On or about December 14, 2014 Defendant began marketing the assets for sale by entering into the Listing Agreement and by soliciting offers from prospective buyers.

10. On or about December 29, 2016, Plaintiff, Carleton Transport and Chapman entered into an Addendum to Agreement whereby the term of the listing under the Listing Agreement was extended so that it was to terminate on January 8, 2018. A copy of the Addendum to Agreement is attached hereto as Exhibit B.

11. At all times material hereto, Chapman was not licensed as a real estate broker, associate broker or real estate salesperson under the Real Estate License Act, NEB. REV. STAT. § 81-885.01 *et seq.* (the "Real Estate License Act").

12. At all times material hereto, Chapman was not qualified and authorized to list, solicit offers to purchase, or to sell real estate under any of the exemptions for non-licensed persons or entities under the Real Estate License Act.

13. At all times material hereto, Chapman was not in compliance with the Real Estate License Act.

14. At all times material hereto, Plaintiff were unaware that Chapman, in acting as a real estate broker in the State of Nebraska, was not in compliance with the Real Estate License Act.

15. Chapman has made demand on Plaintiff and Carleton Transport for Plaintiff and Carleton Transport to pay Chapman a commission under the Listing Agreement and has threatened to file litigation against Plaintiff and Carleton Transport to recover such commission by a letter dated April 20, 2018 from Mr. Jeffrey C. Blumenthal, attorney at law. A copy of such letter is attached hereto as Exhibit C.

16. Section 81-885.06 of the Real Estate License Act prohibits Chapman from filing any action for the recovery of a commission.

17. Since Chapman was and is in violation of the Real Estate License Act, Chapman is not qualified and is not entitled to file an action against Plaintiff and Carleton Transport for the recovery of a commission under the Listing Agreement and is not entitled to a commission under the Listing Agreement.

WHEREFORE, Plaintiff prays that the Court enter a judgment declaring the following:

a. That Chapman is not qualified and not entitled to file an action against Plaintiff and Carleton Transport for the recovery of a commission under the Listing Agreement;

b. That Chapman is not entitled to a commission under the Listing Agreement; and

c. That Plaintiff is entitled to his costs herein expended.

DATED: May 16, 2018.

EDWIN CARLETON, Plaintiff



By:

Christopher J. Tjaden, #18413
Of: GROSS & WELCH P.C., L.L.O.
1500 Omaha Tower
2120 South 72nd Street
Omaha, Nebraska 68124
Telephone: (402) 392-1500
Facsimile: (402) 392-8101
ctjaden@grosswelch.com
ATTORNEY FOR PLAINTIFF



SELLER AGREES

Edward Carleton and Carleton Transport Service ("Seller") with the principal mailing address at 13556 S. 220th Street, Gretna, NE 68028-4928 hereby grant(s) Chapman Merger & Acquisitions Services, Inc. ("Chapman") the exclusive right to sell: Carleton Transport Service ("Business"), with its principal address at 13556 S. 220th Street, Gretna, NE 68028-4928, for a period of 365 days from the date of this agreement. The Asking Price shall be \$5.2 million for 100% of the assets, free and clear of debt, excluding cash and trade accounts receivable; or on such other terms as are acceptable to Seller.

1. Seller agrees that the effort to sell the Business is a collaborative process between the Seller and Chapman and agrees to reasonably cooperate with Chapman in effecting the sale of the Business. Such cooperation shall include providing Chapman with information and documentation on a timely basis and making themselves and the Business reasonably available to representatives of Chapman and potential purchasers for the Business.
2. Seller agrees to provide Chapman written notification within three (3) business days of any material changes in the Business including but not limited to litigation, debt restructure, tax status, audits, accounting, environmental issues, major account and/or vendor changes, etc.
3. Seller agrees to refer all inquiries regarding the sale of the Business to Chapman during the term of this agreement.
4. Seller agrees not to do business with a party covered by this agreement unless Seller compensates Chapman per the commission schedule for any consideration received from a purchaser regardless of the nature or form of that transaction or business relationship. The minimum commission would be applicable in this event.
5. Seller agrees to compensate Chapman in accordance with the terms of this Agreement.
6. Seller agrees that Chapman's commission shall be due and payable in the event that Chapman delivers an offer from a buyer that meets the asking price and terms stated in this agreement and Seller rejects such offer without a commercially reasonable explanation.
7. Seller agrees that Chapman's commission shall be due and payable in the event that Seller signs an agreement to sell or lease the Business or enters into a quasi business agreement either during the term of this agreement or within 24 months of the expiration of the agreement to a purchaser solicited by Chapman under this agreement or to a purchaser that approached Seller directly or Seller or Seller's advisors approached during the term of this agreement even if Seller did not refer the inquiry to Chapman.
8. Seller agrees to work through Chapman with purchasers solicited by Chapman under this agreement, purchasers that approached Seller directly, or Seller or Seller's advisors approached during the term of this agreement.

CHAPMAN AGREES

Chapman hereby agrees to:

1. Assist the Seller in determining an appropriate value for the Business.
2. Assist Seller in developing various structures for the sale of the Business.
3. Analyze the Business and its industry to identify likely purchasers.
4. Develop a customized marketing program for the Business in order to solicit likely purchasers.
5. Research and prepare a marketing brochure and/or other materials to present the Business to potential purchasers.
6. Search Chapman's proprietary database of active buyers to identify potential purchasers for the Business.
7. Solicit these potential purchasers on the Seller's behalf.
8. Promote the Business in an anonymous fashion to protect the identity of the Business and the Seller.
9. Inform our regional offices about this acquisition opportunity so that they may contact potential purchasers.
10. Assist Seller in structuring and closing the sale of the Business once a purchaser has been identified.



COMMISSION

1. Chapman's commission will be determined in accordance with the following schedule and will be based on the Total Consideration paid for the Business. Total Consideration means the purchase price for the Business and includes all consideration payable by a purchaser, whether in cash, promissory notes, shares of the purchaser or assumed obligations of the Business, whether for the purchase of stock or assets, and includes the value of any earn outs, covenants, consulting, employment, non-compete, royalty, lease or other agreements that provide value to the Seller. In the case of the sale of stock, total consideration includes all of the liabilities of the Business. In the event that the Seller or a related entity personally owns any of the assets included in the sale of the Business, the consideration paid for these assets shall be included in the definition of Total Consideration. In the event that additional assets and/or entities with common or related ownership are purchased or leased they would also be included in the Total Consideration.
2. Chapman's commission shall be calculated as follows:
 - 6% of the first FIVE MILLION U. S. Dollars (\$5,000,000) in Total Consideration, and
 - 4% of the next FIVE MILLION U. S. Dollars (\$5,000,000) in Total Consideration, and
 - 2% of the balance over TEN MILLION U. S. Dollars (\$10,000,000) in Total Consideration.
3. Regardless of the amount of Total Consideration paid for the Business, Chapman and Seller agree that the minimum commission due Chapman shall be \$180,000 U. S. Dollars.
4. Chapman's commission is due concurrently with the closing of the sale of the Business or upon change of control of the Business; whichever occurs first. The payment shall be made in immediately available funds in cash or by wire transfer to an account designated by Chapman Merger & Acquisitions Services, Inc.
5. Forfeited option or earnest money paid by prospective purchaser shall be divided equally between Chapman and Seller.
6. In the event that: (1) Seller withdraws the Business from the market during the term of this Agreement, or (2) Seller does not provide normally requested information essential to complete a sale within 21 business days of request and will not agree to extend the authorization accordingly to reflect such delays, Seller agrees to pay Chapman the sum of FIFTY THOUSAND U. S. Dollars (\$50,000). These fees are due and payable upon receipt of Chapman's invoice. The collected fees will be credited against and deducted from any commission owed to Chapman.

AGREED TO TERMS

1. A sale of the Business is defined as the sale, lease or other disposition of all or any material part of the assets of the Business or of Seller's equity in the Business to any purchaser including without limitation co-owners, managers, insiders, employees, affiliates, family members and ESOPs. A commission shall also be due in the event that the Seller enters into a quasi-sale type transaction, including without limitation, joint ventures, partnerships, lease, debt or equity financing, strategic alliances, etc, with a party covered by this agreement.
2. Chapman makes no representations about a purchaser's qualifications or ability to purchase or successfully operate the Business. Seller agrees to make an independent investigation of the purchaser's qualifications and abilities.
3. The marketing materials prepared by Chapman regarding the Business, including the descriptive brochure, remain the property of Chapman and may not be used or reproduced without our written permission.
4. Seller agrees to name Chapman as the broker of record in any contract of sale between the Seller and purchaser.
5. Seller shall provide Chapman with copies of all correspondence and documents relating to the sale of the business as received. Seller shall instruct its advisors to provide Chapman with copies of all documents relating to the sale of the Business at the same time that they are provided to Seller.
6. Seller warrants that all information provided to Chapman regarding the Business is true and complete to the best of Seller's knowledge and may be relied upon by Chapman and prospective purchasers. Seller agrees to indemnify and hold Chapman harmless for any claim, loss or damage arising from or related to this agreement, including but not limited to a) the expense of defending an action for incorrect or misleading information regarding the Business received from Seller, and b) Seller's failure to disclose material facts regarding the Business.
7. Seller will not disclose to third parties a purchaser's identity or intent to purchase the Business or any other business, except for professional advisors involved in sale and advised to keep confidential.
8. Chapman is authorized to file a lien on the seller's assets in the amount of the commission due.



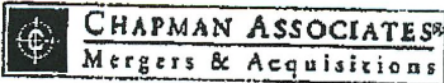
9. With respect to any and all actions arising out of this agreement, seller consents to personal jurisdiction and venue in the state and federal courts located in Cook County, Illinois. This agreement shall be construed in accordance with the laws of the state of Illinois. In the event that Chapman takes legal action to recover its fees or commission seller agrees to pay all costs of collection including reasonable attorney's fees.
10. Seller agrees to permit Chapman, after closing, to disclose in Chapman's marketing materials Chapman's role in representing the Business and Seller.
11. If any part of this Agreement is unenforceable, the remaining provisions shall be enforced without respect to the unenforceable provision.
12. The undersigned parties represent that each signatory is duly empowered by the shareholders of 100% of the issued and outstanding stock of the Business to execute this exclusive authorization to sell the Business.
13. This document constitutes the entire Agreement between the parties and no modifications will be effective unless made in writing and signed by a duly authorized signatory of both parties.
14. Other provisions: _____

AGREED TO BY SELLER:

<i>Edward Carleton</i>	<i>OWNER</i>	<i>12-16-14</i>
Edward Carleton, Individually and Corporately	Title:	Date:
, Individually and Corporately	Title:	Date:
, Individually and Corporately	Title:	Date:

AGREED TO BY: CHAPMAN MERGER & ACQUISITIONS SERVICES, INC.

Joe W. Denny	Title: President	Date:
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ADDENDUM TO AGREEMENT

Seller: Edward Carleton and Carleton Transport Service

Broker: Chapman Merger and Acquisitions Services, Inc.
16 East Schaumburg Road, Suite 104
Schaumburg, IL 60194

Recognizing that the Exclusive Listing Agreement Addendum effective as of January 8, 2016; between the Seller and Broker will expire on January 8, 2017; the Seller and Broker agree to and extend the term of said agreement for an additional 12 months. The Exclusive Listing Agreement will now terminate by its terms on January 8, 2018 or on a 30 day written notice.

All other terms and provisions of the Exclusive Listing Agreement shall remain the same.

Seller

By:

Edward Carleton
Edward Carleton, Owner

Date: December 29, 2016

Chapman Associates Merger and Acquisitions Services, Inc.

By:

Joe W. Denny, President

Date: December 29, 2016



**JEFFREY C. BLUMENTHAL CHARTERED
ATTORNEY AT LAW**

April 20, 2018

✓ **By First Class Mail and**

By E-mail: edward.carleton@tx.rr.com

Mr. Edward Carleton

Carleton Transport Service, Inc.

13556 S. 220th Street

Gretna, Nebraska 68028-4928

By Certified Mail,

Return Receipt Requested

Mr. Edward Carleton

6408 Willowdale Drive

Plano, Texas 75093

**Re: Commission Due Chapman From Carleton Transport and/or Ed Carleton
pursuant to Exclusive Listing Agreement**

Dear Mr. Carleton:

My law firm represents Chapman Merger & Acquisitions Services, Inc. ("Chapman") in connection with its Exclusive Listing Agreement with both Carleton Transport Service, Inc. ("Carleton") and you, personally, as "Owner" (the "Listing Agreement"). Based on, among other things, your admissions to Joe Denny and Carleton's filings with the Nebraska Secretary of State, there was a "change of control"/"sale" of Carleton, during the term of the Listing Agreement (or within 24 months of the expiration of the Listing Agreement), which you extended to January 8, 2018 pursuant to a signed Addendum to the Listing Agreement. Accordingly, a commission is due and owing from Carleton and you to Chapman pursuant to the Listing Agreement.

In a November 14, 2017 e-mail you advised Joe Denny that you have "lost control of the situation," and that your son, Brit, would not work with the prospective purchaser of the business that Chapman presented at that time or anyone else that Chapman presented. You advised that Brit was "going to take over [Carleton] January 2018". In fact, the February 8, 2018 Domestic Corporation Tax Report that Carleton filed with the Nebraska Secretary of State evidenced that Sharon E. Carleton, Brit's wife, had become President of Carleton, replacing yourself as Carleton's new President. This Report also reflected that Sharon replaced you as one of the two directors of Carleton. The Listing Agreement provides, in pertinent in paragraph 4 of the section entitled "Commission" on page 2 of the Listing Agreement, that "Chapman's commission is due concurrently ... upon change of control of the Business."

Additionally, paragraph 1 of the section of the Listing Agreement entitled "Agreed To Terms" on page 2 provides in pertinent part that: "A sale of the Business is defined as the sale... or other disposition of all or any material part of the assets of the Business or of Seller's equity in the Business to any purchaser including without limitation... family members A commission shall also be due in the event that the Seller enters into a quasi-sale type transaction, including, without limitation... with a party covered by this agreement."

As provided in paragraphs 2 and 3 of the section of the Listing Agreement entitled "Commissions", Chapman's commission is calculated as a percentage of the Total Consideration paid for the Business, but in no event less than \$180,000.00. **Demand is made that within ten (10) business days** of the date of this letter, you provide the undersigned with the documents that reflect the "Total Consideration" that

EXHIBIT

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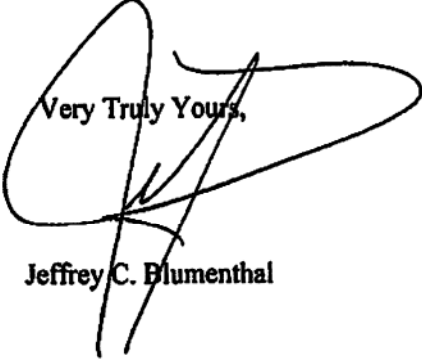
JEFFREY C. BLUMENTHAL CHARTERED

Letter to Edward Carleton, Carleton Transport Service, Inc.
April 20, 2018
Page 2 of 2 pages

Brit/Sharon agreed to pay for "control of/on the sale of" Carleton Transport Services, Inc. so that Chapman can determine the commission due to Chapman under the terms of the Listing Agreement.

In paragraph 9 on page 3 of the section of the Listing Agreement entitled "Agreed to Terms," Carleton and you, as "Owner" "consent[]" to personal jurisdiction and venue in the state and federal courts located in Cook County, Illinois." The referenced paragraph further provides that Carleton and you, as Owner, "agree[]" to pay all costs of collection, including reasonable attorney's fees."

If we do not hear from you and/or your counsel in writing regarding the "Total Consideration" that your son and daughter-in-law have agreed to pay or have already paid for "control of/on the sale of" Carleton within ten (10) business days of the date of this letter, Chapman will have no alternative but to pursue its legal and equitable remedies to obtain the commission that is due and owing to Chapman.

Very Truly Yours,

Jeffrey C. Blumenthal

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Nebraska Judicial Branch

Case Summary

In the District Court of Sarpy County
 The Case ID is CI 18 000954
 Carleton v. Chapman Merger & Acquisition
 The Honorable Nathan B Cox, presiding.
 Classification: Declaratory Judgment-Law
 Filed on 05/16/2018
 This case is Open as of 05/16/2018

Parties/Attorneys to the Case

Party	Attorney
Plaintiff ACTIVE Edwin Carleton 18875 Mason Plaza Elkhorn NE 68022	Christopher J Tjaden 1500 Omaha Tower 2120 South 72nd St Omaha NE 68124 402-392-1500
Defendant ACTIVE Chapman Merger & Acquisitions Serv 16 East Schaumburg Road Suite 104 Schaumburg IL 60194	
Defendant ACTIVE Carleton Transport Service, Inc. 539 Brentwood Road Omaha NE 68114	

Court Costs Information

Incurred By	Account	Date	Amount
Plaintiff	Petition	05/16/2018	\$35.00
Plaintiff	Filing Fee - State	05/16/2018	\$1.00
Plaintiff	Automation Fee	05/16/2018	\$8.00
Plaintiff	NSC Education Fee	05/16/2018	\$1.00
Plaintiff	Dispute Resolution Fee	05/16/2018	\$0.75
Plaintiff	Indigent Defense Fee	05/16/2018	\$3.00
Plaintiff	Uniform Data Analysis Fee	05/16/2018	\$1.00
Plaintiff	J.R.F.	05/16/2018	\$6.00
Plaintiff	Filing Fee-JRF	05/16/2018	\$6.00
Plaintiff	Legal Aid/Services Fund	05/16/2018	\$6.25
Plaintiff	Complete Record	05/16/2018	\$15.00
Plaintiff	Service Fees	06/04/2018	\$7.09