

FILED**SEP 09 2013**THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

Judge Linda G. Thompson

SUPERIOR COURT OF WASHINGTON FOR SPOKANE COUNTY

CARYL HELLER,

Plaintiff,

vs.

VESTUS, LLC, a Washington limited liability
company; BRIAN SANDUSKY and JANE
DOE SANDUSKY, individually and the
marital community composed thereof; and
AARON CUNNINGHAM and JANE DOE
CUNNINGHAM, individually and the marital
community comprised thereof,

Defendants.

No. 13-2-00611-6

ANSWER, AFFIRMATIVE DEFENSES,
COUNTERCLAIM, AND CROSS-
CLAIM OF DEFENDANTS SANDUSKY
AND CUNNINGHAM'S ANSWER TO
COMPLAINT

Come now Defendants Brian Sandusky, Jane Doe Sandusky, Aaron Cunningham, and Jane Doe Cunningham by and through their undersigned counsel, and in answer to Plaintiff's Complaint admit, deny, and allege as follows:

I. ANSWER

1.1 These defendants lack knowledge of the truth or falsity of the allegations in paragraph 1.1 of Plaintiff's Complaint and therefore deny same.

1.2 These defendants admit that Defendant Vestus, LLC, is a Washington Limited Liability Corporation that operates in Spokane County, Washington. These defendants further admit that the alleged acts plaintiff complains of occurred in Spokane County, Washington.

ANSWER, AFFIRMATIVE DEFENSES,
COUNTERCLAIM, AND CROSS-CLAIM OF
DEFENDANTS SANDUSKY AND CUNNINGHAM'S
ANSWER TO COMPLAINT - 1
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1 The remainder of paragraph 1.2 contains legal conclusions for which no answer is required. To
2 the extent an answer is required, these allegations are denied.

3 1.3 These defendants admit that Defendant Sandusky is a resident of Spokane
4 County. The remainder of paragraph 1.3 contains legal conclusions for which no answer is
5 required. To the extent an answer is required, it is denied.

6 1.4 These defendants admit that Defendant Cunningham is a resident of Spokane
7 County. The remainder of paragraph 1.3 contains legal conclusions for which no answer is
8 required. To the extent an answer is required, it is denied.

9 1.5 Paragraph 2.1 of Plaintiff's Complaint does not require any statement of
10 admission or denial by these defendants. To the extent that paragraph 2.1 does or could be
11 construed to assert any factual allegations requiring admission or denial, these defendants adopt
12 by reference, as if fully set forth herein, their answers to paragraphs 1.1 through 1.4 of
13 Plaintiff's Complaint.

14 1.6 Paragraph 2.2 of Plaintiff's Complaint does not require any statement of
15 admission or denial by these defendants. To the extent an answer is required, it is denied.

16 1.7 The question of whether the court has subject matter jurisdiction over this matter
17 is a legal conclusion for which no answer is required. To the extent an answer is required, it is
18 denied. These defendants admit that the subject transactions occurred in Spokane, Washington,
19 but deny that the transactions occurred as they are described in Plaintiff's Complaint. These
20 defendants deny the remaining allegations contained in paragraph 2.3.

21 1.8 Paragraph 2.4 of Plaintiff's Complaint contains legal conclusions for which no
22 answer is required. To the extent an answer is required, it is denied.

23 1.9 Paragraph 3.1 of Plaintiff's Complaint does not require any statement of
24 admission or denial by these defendants. To the extent that paragraph 3.1 does or could be
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1 construed to assert any factual allegations requiring admission or denial, these defendants adopt
2 by reference, as if fully set forth herein, their answers to paragraphs 1.1 through 2.4 of
3 Plaintiff's Complaint.

4 1.10 Paragraph 3.2 of Plaintiff's Complaint contains legal conclusions for which no
5 answer is required. To the extent an answer is required, it is denied.

6 1.11 In answer to paragraph 3.3 of Plaintiff's Complaint, these defendants admit that
7 Defendant Cunningham met plaintiff at a foreclosure auction around November 2007. These
8 defendants further admit that Defendant Cunningham told plaintiff about the weekly Vestus
9 meetings and explained that Vestus compiles publicly available information for its clients on
10 homes in foreclosure for its clients. These defendants deny the remaining allegations in
11 paragraph 3.3 of Plaintiff's Complaint.

12 1.12 In answer to paragraph 3.4 of Plaintiff's Complaint, these defendants admit that
13 at its weekly meetings Vestus provides its clients with publicly available information on homes
14 in foreclosure, including comparative marketing analysis reports, and buying strategies. These
15 defendants deny the remaining allegations in paragraph 3.4 of Plaintiff's Complaint.

16 1.13 In answer to paragraph 3.5 of Plaintiff's Complaint, these defendants admit that
17 at its weekly meetings Vestus provides its clients with publicly available information on homes
18 in foreclosure, including comparative marketing analysis reports and buying strategies. These
19 defendants deny the remaining allegations in paragraph 3.5 of Plaintiff's Complaint.

20 1.14 In answer to paragraph 3.6 of Plaintiff's Complaint, these defendants admit that
21 Brian Sandusky and Aaron Cunningham are licensed real estate brokers and participated in
22 various Vestus meeting. These defendants deny the remaining allegations in paragraph 3.6 of
23 Plaintiff's Complaint.
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1 1.15 In answer to paragraph 3.7 of Plaintiff's Complaint, these defendants admit that
2 on or about December 6, 2007, plaintiff attended an investor meeting for Vestus at Windermere
3 North in Spokane, Washington; admit that on or about January 16, 2008, plaintiff attended a
4 Vestus investor meeting; and admit that on both occasions plaintiff voluntarily signed a
5 compensation/confidentiality client agreement. These defendants deny the remaining
6 allegations in paragraph 3.7 of Plaintiff's Complaint.

7 1.16 In answer to paragraph 3.8 of Plaintiff's Complaint, these defendants admit that
8 the compensation/confidentiality client agreement plaintiff executed with Vestus provided that
9 if the client purchased a property that Vestus provided information on within six months, the
10 client was required to pay the broker a fee of 3% of the most recent assessed value or the sales
11 price, whichever was higher. The minimum commission due on any single property was
12 \$3,000. These defendants deny the remaining allegations in paragraph 3.8 of Plaintiff's
13 Complaint.

14 1.17 In answer to paragraph 3.9 of Plaintiff's Complaint, these defendants admit that
15 plaintiff bought and sold one home using information she received from Vestus, expressed that
16 she was pleased with the results, and paid the contracted-for commission. These defendants
17 deny the remaining allegations in paragraph 3.9 of Plaintiff's Complaint.

18 1.18 In answer to paragraph 3.10 of Plaintiff's Complaint, these defendants admit
19 that at its weekly meetings Vestus provides its clients with publicly available information on
20 homes in foreclosure, including comparative marketing analysis reports, and buying strategies.
21 These defendants admit that plaintiff attended a Vestus meeting on or about February 12, 2009,
22 which Defendant Cunningham and Defendant Sandusky attended as well. These defendants
23 deny the remaining allegations in paragraph 3.10 of Plaintiff's Complaint.
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1 1.19 In answer to paragraph 3.11 of Plaintiff's Complaint, these defendants admit
2 that at its weekly meetings Vestus provides its clients with publicly available information on
3 homes in foreclosure, including comparative marketing analysis reports, and buying strategies;
4 admit that the "Liberty Lake" property was a "top pick" of the week, with an estimated market
5 value of \$300,000; and admit that the opening bid for the property at auction was \$192,000.
6 These defendants deny the remaining allegations in paragraph 3.11 of Plaintiff's Complaint.

7 1.20 In answer to paragraph 3.12 of Plaintiff's Complaint, these defendants admit
8 that Defendant Sandusky gave plaintiff a form with details about the Liberty Lake property,
9 including a photograph of the property, the address of the property, and a Vestus identification
10 number; admit that the form included "title details," which contained a hand-written note
11 indicating that the opening bid was \$192,000; and admit that the form stated that the fair
12 market value of the property was approximately \$300,000. These defendants deny the
13 remaining allegations in paragraph 3.12 of Plaintiff's Complaint.

14 1.21 In answer to paragraph 3.13 of Plaintiff's Complaint, these defendants admit
15 that on February 13, 2009, plaintiff attended the trustee sale. These defendants deny the
16 remaining allegations in paragraph 3.13 of Plaintiff's Complaint.

17 1.22 In answer to paragraph 3.14 of Plaintiff's Complaint, these defendants admit
18 that on February 13, 2009, plaintiff purchased the Liberty Lake property for \$192,001 at the
19 Spokane County Courthouse and that plaintiff paid her contracted-for commission of \$6,945,
20 three-percent (3%) of the properties last assessed value of \$231,500. These defendants deny
21 the remaining allegations in paragraph 3.14 of Plaintiff's Complaint.

22 1.23 These defendants deny the allegations contained in paragraph 3.15 of Plaintiff's
23 Complaint.
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1 1.24 These defendants deny the allegations contained in paragraph 3.16 of Plaintiff's
2 Complaint.

3 1.25 These defendants deny the allegations contained in paragraph 3.17 of Plaintiff's
4 Complaint.

5 1.26 In answer to paragraph 3.18 of Plaintiff's Complaint, these defendants admit
6 that plaintiff contacted Defendant Cunningham to complain that she believed the Liberty Lake
7 property had been overvalued in the comparative market analysis. These defendants deny the
8 remaining allegations in paragraph 3.18 of Plaintiff's Complaint.

9 1.27 These defendants deny the allegations contained in paragraph 3.19 of Plaintiff's
10 Complaint.

11 1.28 Paragraph 3.20 of Plaintiff's Complaint contains legal conclusions for which no
12 answer is required. To the extent an answer is required, it is denied.

13 1.29 In answer to paragraph 3.21 of Plaintiff's Complaint, these defendants admit
14 that at its weekly meetings Vestus provides its clients with publicly available information on
15 homes in foreclosure, including comparative marketing analysis reports, and buying strategies.
16 These defendants further admit that foreclosure auctions typically take place the following day
17 at 10:00 am. These defendants deny the remaining allegations contained in paragraph 3.21 of
18 Plaintiff's Complaint.

19 1.30 In answer to paragraph 3.22 of Plaintiff's Complaint, these defendants admit
20 that Plaintiff waited about a year to sell the Liberty Lake property after she purchased it. These
21 defendants lack knowledge of the truth or falsity of the remaining allegation contained in
22 paragraph 3.22 of Plaintiff's Complaint, and therefore deny the same.

23 1.31 These defendants deny the allegations contained in paragraph 3.23 of Plaintiff's
24 Complaint.

1 1.32 Paragraphs 4.1 through 4.8 of Plaintiff's Complaint are not directed at these
2 defendants and do not require any statement of admission or denial by these defendants.
3 Furthermore, they contain legal conclusions for which no answer is required. To the extent that
4 paragraphs 4.1 through 4.8 do or could be construed to assert any factual allegations requiring
5 admission or denial, these defendants deny the same.

6 1.33 Paragraph 5.1 of Plaintiff's Complaint does not require any statement of
7 admission or denial by these defendants. To the extent that paragraph 5.1 does or could be
8 construed to assert any factual allegations requiring admission or denial, these defendants adopt
9 by reference, as if fully set forth herein, their answers to paragraphs 1.1 through 4.8 of
10 Plaintiff's Complaint.

11 1.34 Paragraph 5.2 of Plaintiff's Complaint contains legal conclusions for which no
12 answer is required. To the extent an answer is required, the allegations contained in paragraph
13 5.2 are denied.

14 1.35 Paragraph 5.3 of Plaintiff's Complaint contains legal conclusions for which no
15 answer is required. To the extent an answer is required, the allegations contained in paragraph
16 5.3 are denied.

17 1.36 Paragraph 5.4 of Plaintiff's Complaint contains legal conclusions for which no
18 answer is required. To the extent an answer is required, the allegations contained in paragraph
19 5.4 are denied.

20 1.37 Paragraph 5.5 of Plaintiff's Complaint contains legal conclusions for which no
21 answer is required. To the extent an answer is required, the allegations contained in paragraph
22 5.5 are denied.

1 1.38 Paragraph 5.6 of Plaintiff's Complaint contains legal conclusions for which no
2 answer is required. To the extent an answer is required, the allegations contained in paragraph
3 5.6 are denied.

4 1.39 Paragraph 6.1 of Plaintiff's Complaint does not require any statement of
5 admission or denial by these defendants. To the extent that paragraph 6.1 does or could be
6 construed to assert any factual allegations requiring admission or denial, these defendants deny
7 the same.

8 1.40 These defendants deny the plaintiff's prayer for relief in its entirety.

9 1.41 These defendants deny each and every allegation contained in Plaintiff's
10 Complaint not otherwise specifically admitted herein.

11 II. AFFIRMATIVE DEFENSES

12 As affirmative defenses to Plaintiff's Complaint, these defendants allege:

13 2.1 As their first affirmative defense, these defendants allege that, as to one or more
14 of plaintiff's claims, plaintiff has failed to state a claim upon which relief can be granted.

15 2.2 As their second affirmative defense, these defendants allege that one or more of
16 plaintiff's claims are barred by the doctrines of collateral estoppel and/or res judicata.

17 2.3 As their third affirmative defense, these defendants allege that plaintiff's
18 claimed injuries and damages, if any, were caused in whole or in part by plaintiff's own
19 negligence and/or other fault.

20 2.4 As their fourth affirmative defense, these defendants allege that plaintiff's
21 claimed injuries and damages, if any, were caused in whole or in part by parties over whom
22 these defendants had no right of control or legal responsibility.

23 2.5 As their fifth affirmative defense, these defendants allege that plaintiff failed to
24 mitigate her claimed damages.
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3.1 As counterclaim, these defendants allege that plaintiff's claims, in whole or in part, are frivolous and advanced without reasonable cause, and these defendants are entitled to recover attorney's fees against plaintiffs pursuant to RCW 4.84.185, CR 11, and/or other applicable law.

4.1 These defendants allege that if they are held liable to the Plaintiff, which liability is hereby denied, the cross-claimed Co-Defendant, Vestus, LLC, would be jointly liable with these defendants; and that these defendants would therefore be entitled to contribution and/or indemnification from the cross-claimed Co-Defendant, Vestus, LLC, for any judgment rendered against these defendants for Vestus, LLC's percentage share of fault.

5.1 These defendants reserve the right to plead further answer, affirmative defenses, counterclaims, cross-claims, and/or third-party claims as investigation and discovery may warrant.

These defendants pray for judgment as follows:

1. That Plaintiff's Complaint be dismissed with prejudice;
2. That these defendants be awarded their reasonable attorney fees, statutory attorney fees, court and litigation costs, and expenses incurred;
3. For such other and further relief as the court may deem just and equitable in the premises.

1 DATED this 3rd day of September, 2013.

2 LEE SMART, P.S., INC.

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4 By: Allison Moon
5 Jeffrey P. Downer, WSBA No. 12625
6 Allison J. Moon, WSBA No. 48176
7 Of Attorneys for Defendants Sandusky and
8 Cunningham
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