

Velva L. Price
District Clerk
Travis County
D-1-GN-18-007069
Gilberto Rios

CAUSE NO. D-1-GN-18-007069

TURNQUIST PARTNERS REALTORS, INC.
d/b/a ENGEL & VÖLKERS AUSTIN,

Plaintiff,

v.

ROBERT TURNER, ITCOA, LLC d/b/a
INDEPENDENCE TITLE COMPANY, and
SECURED LAND TRANSFER, LLC d/b/a
INDEPENDENCE TITLE,

Defendants.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

ROBERT TURNER,

Counter-Plaintiff,

v.

TURNQUIST PARTNERS REALTORS, INC.
d/b/a ENGEL & VÖLKERS AUSTIN,

Counter-Defendant.

419TH JUDICIAL DISTRICT

DEFENDANT ROBERT TURNER’S FIRST AMENDED ANSWER

TO THE HONORABLE COURT:

Defendant Robert Turner (“Turner”) files this First Amended Answer to the claims of Plaintiff Turnquist Partners Realtors, Inc. d/b/a Engel & Völkers Austin (“EVA”), and would respectfully show the following:

GENERAL DENIAL

- 1. Turner generally denies all of EVA’s material allegations and demands strict proof thereof.

AFFIRMATIVE DEFENSES

2. In addition to or in the alternative, and without waiving any affirmative claims for relief Turner might assert in this lawsuit, Turner pleads the following by way of affirmative defense:

a. EVA's claims are barred, in whole or in part, by its commission of statutory fraud and common-law fraud;

b. EVA's claims are barred, in whole or in part, by its breach of fiduciary duties to Turner;

c. EVA's claims are barred, in whole or in part, by promissory estoppel;

d. EVA's claims are barred, in whole or in part, by estoppel;

e. EVA's claims are barred, in whole or in part, by waiver;

f. EVA's claims are barred, in whole or in part, by release;

g. EVA's claims are barred, in whole or in part, by accord and satisfaction;

h. EVA's claims are barred, in whole or in part, by modification;

i. In the unlikely event EVA is entitled to an award of actual damages, any such damages are subject to offset, including, but not limited to, by way of forfeiture for breach of fiduciary duty; and

j. In the unlikely event EVA is entitled to an award of exemplary or punitive damages, any such damages are subject to offset, including, but not limited to, by way of forfeiture for breach of fiduciary duty, and are also subject to the proof requirements and limitations set forth in Chapter 41, Texas Civil Practice & Remedies Code.

ATTORNEYS' FEES AND COSTS

3. It was necessary for Turner to retain the services of the undersigned counsel to defend against EVA's claims. Defendant seeks an award of reasonable attorneys' fees and costs of this lawsuit as a prevailing party pursuant to Paragraph 18 of the Listing Agreements upon which EVA's breach of contract claim is based.

RELIEF REQUESTED

WHEREFORE, Turner prays that upon trial and hearing, EVA take nothing by its suit and that the Court enter judgment in favor of Turner on all of EVA's claims and award Turner his reasonable attorneys' fees, costs of court, litigation expenses, and such other legal and equitable relief to which Turner is justly entitled.

Respectfully submitted,

SPOUSE SHRADER SMITH PLLC

/s/ Jeffrey G. Henry

Jeffrey G. Henry

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**ATTORNEYS FOR DEFENDANT /
COUNTER-PLAINTIFF ROBERT TURNER**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served on all counsel via the Court's electronic filing and service system and as indicated below on February 18, 2020.

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