

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 06-cv-02206-JLK

JANET STUART SMITH and
JUSTINE SCOTT TAYLOR,
individually and as co-personal representatives of
THE ESTATE OF JUSTINE H. SMITH, deceased,

Plaintiffs,

v.

SLIFER SMITH & FRAMPTON/VAIL ASSOCIATES
REAL ESTATE, LLC and
PETER W. SEIBERT, JR.,

Defendants.

ORDER

Kane, J.

In light of Magistrate Judge Watanabe's findings and recommendation, adopted as Orders of this Court, that Defendants' willful and bad faith destruction of electronically stored information on Defendant Seibert's computers warrants the use of an adverse inference instruction at trial which would instruct the jury to infer that the destroyed evidence would have been unfavorable to Defendants, Defendants' Motion for Summary Judgment (Doc. 60) is **DENIED**. The availability of such adverse inferences preclude entry of summary judgment on any of Plaintiffs' claims, which are premised on allegations that Seibert breached

his statutory duties as a transaction broker and otherwise acted negligently or fraudulently in his advice or failure to advise Plaintiffs regarding the purchase and sale of Plaintiffs' Vail property.

This case will be set for a Pretrial Conference by separate Minute Order. As counsel may be aware, I require the parties to draft, exchange and submit a comprehensive, unified set of proposed jury instructions before the Pretrial Conference. (Further instructions regarding my pretrial conference requirements will be forthcoming in the Minute Order setting it). In addition, I will hear oral argument at the pretrial conference on Plaintiffs' Motion in Limine re Agency Action Concerning Plaintiffs' Expert Bill Forsythe (Doc. 59).

Finally, I advise the parties that if either side wishes a referral for settlement (with a magistrate judge other than Magistrate Judge Watanabe), counsel should contact my chambers and request one.

Dated: March 24, 2009

s/John L. Kane
SENIOR U.S. DISTRICT JUDGE