

Excerpts from the Deposition
of Mark S. Klein, CCIM

August 27, 2009

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
Civil Action No. 8:08-cv-01227-JSM-MSS

-----x
KLEIN & HEUCHAN, INC.,
Plaintiff,
vs.
COSTAR REALTY INFORMATION,
INC., and COSTAR GROUP,
INC.,
Defendants/
Counterclaim-Plaintiffs,
vs.
SCOTT BELL and
KLEIN & HEUCHAN, INC.,
Counterclaim-Defendants.
-----x

ORIGINAL

VIDEOTAPED
DEPOSITION

OF: MARK S. KLEIN, CCIM
DATE: August 27, 2009
TIME: 9:25 a.m. to 1:10 p.m.
PLACE: Macfarlane Ferguson & McMullen, P.A.
Interinvest Bank Building
625 Court Street, Suite 200
Clearwater, Florida 33756
REPORTED BY: Jean M. Wilkes, RPR-CP
Notary Public
State of Florida at Large

WILKES PROFESSIONAL REPORTING, INC.
100 North Tampa Street, Suite 2140
Tampa, Florida 33602
(813) 222-8155

1 schooling?

2 A. Real estate.

3 Q. Okay. Who are the owners of
4 Klein & Heuchan?

5 A. I am.

6 Q. Are there any other owners?

7 A. No.

8 Q. And who are the other corporate officers
9 of Klein & Heuchan?

10 A. Steve Klein.

11 Q. What is his position?

12 A. He's executive vice president and also a
13 broker of record there.

14 Q. Does Klein & Heuchan have any
15 subsidiaries?

16 A. No. Well, you know, what. Let me change
17 that. We have a -- basically, a management LLC.
18 That's a subsidiary.

19 Q. What's the name of that?

20 A. K&H Management Services, I believe.

21 Q. And who are the corporate officers of that
22 entity?

23 A. Oh, it's an LLC, so I -- I'm the managing
24 member.

25 Q. Are there any other managing members?

1 Q. And what was the purpose of his visit that
2 day?

3 A. Realtors co-broke all the time on
4 different listings. And he and this other associate
5 were working on one of our listings, and they came
6 to our office to pick up some information.

7 Q. How did Scott Bell come to work for
8 Klein & Heuchan?

9 A. I believe he was unhappy with what he
10 was doing at Coldwell Banker, and he contacted us
11 and see if we would be interested in him joining us.
12 And we met with him, interviewed with him, and
13 decided that he might be a good candidate for us.

14 Q. And, approximately, when did he start
15 working for you -- or for Klein & Heuchan?

16 A. The dates are there someplace, but it's --
17 what? -- December '06 or something like that.

18 Q. Is he still working for Klein & Heuchan?

19 A. He is kind of a suspended leave. His
20 license is with us. He's a stay-at-home dad. He
21 had two children and decided to do that and make a
22 decision whether he would want to come back to work
23 for us when that -- when the kids were old enough,
24 I guess, or he has a nanny. So he asked if we would
25 hold his license for that period of time and we

1 agreed to.

2 Q. And the suspended leave was his choice?

3 A. Yes.

4 Q. And you agreed to that?

5 A. Yes.

6 Q. And what does it mean when you say you're
7 holding his license?

8 A. All the independent contractors work under
9 my broker's license and Steve's, I believe, also.

10 So his -- excuse me -- I have to have a drink.

11 Although Klein & Heuchan is the entity, there is a
12 broker of record, and we are the brokers of record
13 and those associates work under our brokerage.

14 Q. And he -- if he wanted to come back and
15 work for you, then he could do that easily.

16 A. Um-hum.

17 Q. Holding his license facilitates that,
18 I'm assuming?

19 A. Yes, if we decided we wanted to have him
20 back.

21 Q. Um-hum. Is there any cost to K&H
22 associated with holding his license?

23 A. Very minimal. Most of the costs are
24 paid by him. He must be a member of the Florida
25 Gulfcoast Association of Realtors to be a member and

1 he pays for that himself, and that's -- that is part
2 and parcel of what he has do if he wants to keep his
3 license active with us.

4 Q. Does Klein & Heuchan pay any cost
5 associated with holding his license?

6 A. The City of -- City of Clearwater charges
7 us a fee for every licensed associate, and it's
8 about \$30 a year or something like that.

9 Q. And Klein & Heuchan pays that?

10 A. Yes. We -- it's mandated that we have to
11 pay that.

12 Q. What were Scott Bell's responsibilities at
13 Klein & Heuchan while he worked there?

14 A. Well, he's an independent contractor and
15 we hope that he would bring in money for himself and
16 the company.

17 Q. What exactly did he do day-to-day?

18 A. He contacted -- I assume that he contacted
19 people to list their properties and prospects to
20 sell properties to.

21 Q. Who oversaw his work there?

22 A. I did.

23 Q. What types of interactions did you have
24 with him?

25 A. Well, we have meetings twice a week.

1 to, is the market getting better? Are rates going
2 up, down, values going up and down? General stuff
3 like that.

4 Q. Who else attended the meetings?

5 A. All the associates attend most of the
6 meetings.

7 Q. Were associates required to attend those
8 meetings?

9 A. We make it a provision that they -- when
10 we hire them, that they have to be -- we require
11 that they be at the meetings. It's not mandatory
12 that they're there. But if they don't participate,
13 then we'll sever the relationship.

14 Q. Did you provide -- what kind of office
15 space -- what kind of office space did you provide
16 for Scott Bell?

17 A. Our company has private offices and it has
18 cubicles, and he had a cubicle in one of the areas
19 that we have three cubicles in, I believe.

20 Q. Did you provide him with internet access?

21 A. Yes.

22 Q. Did you provide him with an e-mail
23 account?

24 A. Yes, we did.

25 Q. So, in terms of Scott Bell's -- the

1 hair, you know.

2 BY MS. KERKSIEK:

3 Q. When you used the CCIM license, did you
4 need a password in order to access CoStar?

5 A. I can't remember.

6 Q. Do you remember seeing or reading any
7 terms of use?

8 A. No.

9 Q. Is it something that you logged on with
10 the -- that you used a computer to access?

11 A. Yeah.

12 Q. Yeah. Do you remember anything more about
13 logging on or what you saw once you logged on?

14 A. I don't believe I ever got into the
15 system. I think that the log-on was frustrating.
16 And I wasn't that interested in it, so I just
17 didn't.

18 Q. Did -- so the part of it that was
19 frustrating about it was not being able to access
20 the database?

21 A. I guess. I mean, I was -- it was given to
22 us, you know, I thought, "Well, I'll look at it."
23 You must understand that I knew what CoStar was.
24 We'd been -- your salespeople had been calling on me
25 for years, so, you know, I really didn't think it

1 Q. Do all of the associates at K&H sign this
2 manual?

3 A. Yes, they do.

4 Q. What happens when an -- when an employee
5 violates a provision of this policy manual?

6 A. I mean, if -- if it's a severe violation
7 of the manual, we'll sever our relationship with
8 them.

9 Q. Are there any other less severe
10 consequences that could occur?

11 A. I can't remember really having, you know,
12 any severe violations.

13 Q. All right.

14 MS. KERKSIEK: This is Number 4.

15 (The document was marked as Klein Exhibit
16 Number 4 for identification.)

17 BY MS. KERKSIEK:

18 Q. Have you ever seen Exhibit Number 4
19 before?

20 A. Yes.

21 Q. When did you see this?

22 A. At Scott Bell's deposition.

23 Q. Did you ever see this before that day?

24 A. I never -- I never recall ever seeing
25 this.

1 Q. And the question states, "Identify all
2 persons affiliated with Klein & Heuchan who have
3 used CoStar's products or services."

4 A. Chris Howell, CCIM.

5 Q. Is that -- that's Chris Howell --

6 A. That's a designation.

7 Q. That's a designation?

8 A. Right.

9 Q. Okay. And would Scott Bell be included in
10 that response as well?

11 A. Yes.

12 Q. Anyone else?

13 A. No.

14 Q. Who is Scott Howell -- or Chris Howell?

15 Sorry.

16 A. Chris Howell is an associate, an
17 independent contractor; previously worked at
18 Coldwell Banker; told me that he had used CoStar
19 at Coldwell Banker.

20 Q. Did he use CoStar while he was at
21 Klein & Heuchan?

22 A. No, he did not.

23 Q. Why not?

24 A. Because he didn't have any need for it and
25 he wasn't licensed.