

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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YOSHIO AOMORI, YOSHIO NAGASHIMA, and
NINA G. PREMSELAAR and DIANA H. KREFTING
as Joint Executors of the Estate of MARVIN
TOPOLSKY,

Plaintiffs,

**Amended
Complaint**

-against-

KOLSTEIN MUSIC, INC. and MANNY ALVAREZ,

Defendants.

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Jurisdiction and Venue

1. Plaintiff YOSHIO AOMORI is a resident and citizen of Japan.
2. Plaintiff YOSHIO NAGASHIMA is a resident and citizen of Japan.
3. Plaintiff NINA G. PREMSELAAR is a resident of Summerville, Berkeley County, State of South Carolina; and Plaintiff DIANA H. KREFTING is a resident of Wayne, Passaic County, State of New Jersey; both being Executors of the Estate of MARVIN TOPOLSKY by virtue of Letters Testamentary issued by the Bergen County, New Jersey Surrogate on July 19, 2021.
4. Defendant KOLSTEIN MUSIC, INC., is incorporated under the laws of the State of New York, with a main place of business at 795 Foxhurst Road, Baldwin, County of Nassau, State of New York.
5. Defendant MANNY ALVAREZ, the principal and sole owner of KOLSTEIN MUSIC, INC., is resident at 3050 Freedom Trail, Oviedo, Seminole County, State of Florida.

6. This Court has diversity and subject matter jurisdiction under 28 U.S.C. § 1332, due to Plaintiffs and Defendants being residents of different states or foreign nations, and due to the amounts in controversy, both as to each Plaintiff and the aggregate, exceeding the jurisdictional minimum.

7. Venue is properly placed in this district under 28 U.S.C. § 1391 by virtue of the residency of defendant KOLSTEIN MUSIC, INC. and because a substantial part of the events at issue occurred within this district.

Facts

8. Defendants own and operate a musical instrument dealership and business, which business includes sales on consignment, and held themselves out as such.

9. Plaintiffs were owners of musical instruments and placed their instruments with Defendants under written contract by which they were to receive a fixed amount or percentage of the sale price.

10. Defendants sold the instruments and pocketed all or part of the sale amount without paying to Plaintiffs the amounts owed under contract.

11. To be specific, Plaintiff YOSHIO AOMORI placed on consignment with Defendants a Testore Bass Violin and a Zimmerman model Bass Bow, valued in the aggregate at \$155,000 or more, and was deprived of the contracted for proceeds of the sale.

12. Plaintiff YOSHIO NAGASHIMA placed on consignment with Defendants a Mateo Goffriller Bass Violin, valued at \$255,000 or more, and was deprived of the contracted for proceeds of the sale.

13. Plaintiffs NINA G. PREMSELAAR and DIANA H. KREFTING as Joint Executors of the Estate of MARVIN TOPOLSKY placed on consignment two Bass Violins and forty-three Bass Bows, together valued at \$185,000 or more, and were deprived of the contracted for proceeds of the sale.

First Claim: Breach of Contract

14. Defendants breached their contracts with Plaintiffs, causing significant economic loss, for which Plaintiffs are entitled to recover their full expectation interest, plus interest on the loss.

Second Claim: Breach of Duty of Good Faith and Fair Dealing

15. By acting in bad faith and dealing unfairly with Plaintiffs, Defendants breached their duty under common law duty and under §1-203 of the Uniform Commercial Code.

Third Claim: Breach of Bailment

16. “A bailment is defined as a delivery of personal property for some particular purpose, or a mere deposit, upon a contract express or implied, and that after such purpose has been fulfilled it shall be redelivered to the person who delivered it, or otherwise dealt with according to his directions or kept until he reclaims it, as the case may be. It is essential that there be either an actual or constructive delivery by the bailor as well as actual or constructive acceptance by the bailee [citations].” *Isik Jewelry v. Mars Media, Inc.*, 418 F.Supp.2d 112, 121 (E.D.N.Y. 2005).

17. According to the rule of law as set forth above, Defendants owed a duty of bailment and breached that duty, and Plaintiffs are entitled to all

damages the law allows for such breach, plus interest.

Fourth Claim: Violation of New York General Business Law §349

18. Defendants held themselves out to the public, and to Plaintiffs, as a business selling musical instruments on consignment.

19. By breaching its duties under the above theories, Defendants engaged in deceptive business practices as defined by New York General Business Law §349, and Plaintiffs are therefore entitled to treble damages.

WHEREFORE, Plaintiffs demand judgment on all the above claims, together with costs, attorney's fees, disbursements, and interest.

Dated: New Rochelle, New York
April 8, 2025

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TO: KOLSTEIN MUSIC, INC.
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MANNY ALVAREZ
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