

**Re: Mary Allred / Allred Bros. Ranch
Sale of Hubbell to Kimberley Herold**

Dear Adam:

I have been retained to represent Kimberley Herold in connection with her purchase of the Belgian Warmblood gelding known as "Hubbell" from Mary Allred of Allred Bros. Ranch ("Allred") on December 1, 2016.

As Allred knew, Ms. Herold only recently started horseback riding, after more than a twenty-year hiatus. Additionally, whereas her previous experience had been with pleasure horses, Ms. Herold wanted to begin riding hunter-jumpers. In September 2016, she began taking riding lessons from Betty Beran ("Beran"), and began working with Beran to find a potential horse to purchase as a hunter-jumper. Due to her lack of experience, Ms. Herold relied extensively on the knowledge and expertise of Allred and Beran in evaluating potential horses to purchase.

On November 13, 2016, Allred approached Ms. Herold about purchasing her 10 year-old gelding, Hubbell, for a total purchase price of \$25,000. Given the size of the investment she was going to make in Hubbell, Ms. Herold wanted to make sure he would be a good fit for her and her family. Therefore, after a couple of practice rides she asked Beran to evaluate Hubbell and the proposed purchase. Beran, who was acting in a dual agent capacity, representing both Allred and Ms. Herold, told Ms. Herold that Hubbell "is the perfect horse for you to learn on" and that he is "honest to the fences and is the same horse every day." Obviously, all of the representations made by Beran are imputed on Allred, since Beran was serving as a dual agent in this transaction.

Based on Allred and Beran's recommendations, Ms. Herold agreed to purchase Hubbell, but wanted a veterinarian to perform a pre-purchase examination on the horse. On November 29, 2016, the barn veterinarian, Dr. Martin Crabo, performed the pre-purchase exam and found some areas of concern regarding Hubbell's right hind leg. Both Allred and Beran attended the pre-purchase examination, and they both re-assured Ms. Herold (in fact, were adamant) that Hubbell was serviceably sound and that he just needed joint injections.

As a result the assurances from both Allred and Beran, Ms. Herold proceeded with the purchase and paid Allred immediately. As part of the transaction, Beran was to receive the standard dual-agent commission (10%) in the equine industry. However, almost immediately after Ms. Herold purchased Hubbell, it became apparent that the problems identified in the pre-purchase examination were much more serious than both Allred and Beran disclosed, and that Allred knew of the severity of the problems long before approaching Ms. Herold to purchase Hubbell.

Throughout December 2016 and January 2017, Hubbell was repeatedly put on stall rest or light work. In what became a regular pattern, Hubbell would be able to be ridden for a few days, then not be able to work under saddle— Hubbell would be placed on stall rest or light work for four to seven days. On January 31st Ms. Herold removed Hubbell from Beran's facility after receiving confirmation that Hubbell was severely injured in his rear leg in 2012 and 2013- an injury that was not disclosed to my client. Shortly after removing Hubbell from Beran's facility, Ms. Herold was advised by Dr. Crabo that Hubbell would need surgery- a fasciotomy and neurectomy- and then 9-12 months of stall rest and rehabilitation before he would be fit to ride again. After researching this diagnosis of upper rear suspensory injury, my client understands clearly that this is a significant and often career ending injury for horses and that he may never jump at the same height he was purchased for.

Ms. Herold has now discovered additional facts about Hubbell that would have changed her mind about purchasing him, had she known about them at the time. For example, Ms. Herold has learned that Allred sold Hubbell for \$75,000 in 2011 to a rider in Colorado. Two years later, Hubbell was injured so badly

that he was returned to Allred **for free** because he had been injured while riding and needed at least a year of rehabilitation.

Further research shows that the injury Hubbell sustained in Colorado was in his right hind leg, the same leg in which he is now experiencing lameness. In fact, the fact pattern in Colorado, from November of 2012 to March of 2013, is nearly identical to what Ms. Herold experienced. Hubbell would be intermittently lame, often very lame, with no identifiable issue or cause. As you will see in the veterinary records from Littleton Equine Medical Center, attached as Exhibit 1, when the chronic lameness continued and could not be resolved, Dr. Beeman recommended a nuclear scan of Hubbell in an effort to try and diagnose the true issue causing his lameness.

Upon receiving the vet records from Colorado, Hubbell's true age is also in question. In a 2013 exam, he is listed as "12 years and 1 month" old. This would make Hubbell 15 to 16 years of age- a far cry and gross misrepresentation from the 10 year-old horse my client thought she purchased for herself, and then her children, to ride.

Given the previous injury and the rapid deterioration in his condition immediately after his purchase, it is clear that Allred intentionally and actively misled Ms. Herold regarding Hubbell's medical condition and took advantage of the disparity between their personal knowledge and experience and hers in order to persuade her to purchase Hubbell. Certainly, neither Allred nor Beran disclosed to Ms. Herold the long history of Hubbell's lameness, the fact that he required a significant amount of vet treatment in the past or that he was given back to Allred due to these issues. In fact, both Allred and Beran did the opposite, in that they stated that Hubbell required *very little* vet work- namely joint injections- to keep him sound. That was a patent lie.

As a result of this tortious conduct, Ms. Herold has been left with a horse that not only is unable to fulfill the purpose for which she purchased it— his resale value is completely gone within days of the transaction, and will be an ongoing financial liability for years to come. To date, Ms. Herold has incurred the following damages:

Purchase price: \$25,000.00
Veterinarian fees: \$ 8,330.19
Boarding fees: \$ 4,000.00
Tack: \$ 520.00
Farrier's fees: \$ 375.00
Supplements: \$ 300.00
Lost Deposit: \$ 250.00

TOTAL: \$38,775.19

These numbers will only increase every month going forward, as Hubbell will likely need to undergo surgery in the near future, which will cost approximately \$3,800 - \$4,800 (assuming no complications), between \$1500 - \$3000 in post- surgical care, and \$18,000 in board and care during rehabilitation (as outlined in the above monthly expenses). This is simply the next 12 months expenses, barring any complications or additions to Hubbell's vet needs.

Ms. Herold has already tried to resolve this with Allred and Beran by agreeing to return Hubbell in exchange for return of the purchase price and payment of the above expenses, but to date they have declined to do so. Ms. Herold's interest in resolving this matter without litigation is decreasing every day as her veterinarian, boarding and attorney fees continue to rise. Therefore, if Allred does not promptly accept the return of Hubbell and pay the above amount, please be advised that Ms. Herold intends to pursue all available remedies against Allred and Beran including, but not limited to, the following:

- Consumer fraud against both Allred and Beran pursuant to Arizona's Consumer Fraud Act, A.R.S. § 44-1521, et seq. for their conduct in connection with the sale of Hubbell.
- Common law fraud and fraudulent misrepresentation against both Allred and Beran for concealing Hubbell's actual medical condition and actively misleading Ms. Herold in connection with the sale of Hubbell. See, *Comerica Bank v. Mahmoodi*, 224 Ariz. 289 (App., 2010) (outlining the elements of fraud).
- Rescission and rescissory damages pursuant to Arizona's Uniform Commercial Code, A.R.S. § 47-2721.
- Breach of warranty pursuant to A.R.S. § 47-2315.

Under these claims, Allred will also be liable for all consequential and incidental damages, as well as for Ms. Herold's attorney's fees, in addition to the actual damages Ms. Herold has suffered. See A.R.S. § 12-341.01. Most significantly, your client's intentionally wrongful conduct has exposed you to liability for punitive damages. See *Fousel v. Ted Walker Mobile Homes, Inc.*, 124 Ariz. 126, 130 (App. 1979) (awarding punitive damages for fraudulent conduct in a sale under the Uniform Commercial Code); *Dunlap v. Jimmy GMC of Tucson, Inc.*, 136 Ariz. 338 (App. 1983) (awarding punitive damages under the Consumer Fraud Act); *Security Title Agency v. Pope*, 219 Ariz. 480 (App. 2008) (awarding punitive damages of more than \$6 million for breach of fiduciary duty).

Ms. Herold has agreed to leave her proposal to return Hubbell in exchange for payment of the above enumerated expenses open until **Monday, February 20, 2017**. If a resolution is not reached before then, we will proceed accordingly.

Your prompt response is expected.

Very truly yours,

Michael F. Beethe
for the Firm

MFB:rc
Enclosures
cc: Kim Herold (Via E-Mail)