



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

U. S. COAST GUARD ACADEMY
ALUMNI ASSOCIATION, INC.,

a Delaware Corporation,

Plaintiff,

v.

KRISTEN E. VISBAL, a Delaware
resident, Individually and trading as
"Visbal Fine Bronze Sculpture, Inc.,"

VISBAL SCULPTURES, INC., a
Delaware Corporation, Individually
and trading as "Visbal Fine Bronze
Sculpture, Inc.",

&

**VISBAL FINE BRONZE
SCULPTURE, INC.**, an unregistered
entity,

Defendants.

C.A. No. _____

ARBITRATION

COMPLAINT

1. The Plaintiff United States Coast Guard Academy Alumni Association ("Alumni Association") is a Delaware corporation with its principal offices located at the United States Coast Guard Academy in New London, Connecticut ("Academy").

2. Defendant Kristen E. Visbal (“Visbal”), is a sculptress of bronze statues with studios and place of business located at 1618 Vinyard Lane in Lewes, Delaware 19958.

3. Defendant Visbal Sculpture, Inc. (“Visbal Sculpture, Inc.”) is a Delaware corporation with a registered address of 1618 Vinyard Lane in Lewes, Delaware 19958. Visbal Sculpture, Inc.’s principal place of business is also at that location.

4. Visbal is the registered agent for Visbal Sculpture, Inc.

5. Defendant Visbal Fine Bronze Sculpture, Inc. is an entity not incorporated or registered in the State of Delaware.

6. “Visbal Fine Bronze Sculpture, Inc.” is not the name of a registered Delaware business entity, nor is it a trade, business or fictitious name registered with the Prothonotary of the Superior Court.

7. Upon information and belief, “Visbal Fine Bronze Sculpture, Inc.” is an unregistered trade name used by Visbal, Visbal Sculpture, Inc., or both.

8. Additionally or alternatively, “Visbal Fine Bronze Sculpture, Inc.” is the name of a foreign entity with a principal place of business at 1618 Vinyard Lane in Lewes, Delaware 19958.

9. As a part of its work, the Alumni Association coordinates and administers alumni gifts to the Academy, including gifts made by the Academy Class of 1963 (“Class of ‘63”).

10. On February 22, 2017 the Alumni Association entered into an agreement with Visbal, Visbal, Inc. and Visbal Fine Bronze Sculpture, Inc. or some combination thereof.

11. The agreement was entitled “Art Agreement.” A copy of the Art Agreement is attached hereto as Exhibit “A” and incorporated here by reference.

12. In simple terms, the Art Agreement, as Phase I of the project, called for one or all of the Defendants to produce a clay maquette for what would ultimately be a 9-foot tall bronze statue of Alexander Hamilton, and the Art Agreement called for the Alumni Association to pay for the statue and the services.

13. The statue was a planned gift to the Academy funded by the Class of ‘63.

14. The statue was to be delivered to the Academy in time for the statue’s dedication at the 55th homecoming for the Class of ‘63.

15. One or all of the Defendants were obligated to complete and deliver the statue by not later than October 11, 2018.

16. Time was of the essence for performance of the Art Agreement.

17. One or all of the Defendants were aware or should have been aware that time was of the essence.

18. During the months following the execution of the Art Agreement, the parties had multiple communications concerning the production of the maquette and the Hamilton statue.

19. The Alumni Association paid \$28,102.25 in accord with the Art Agreement and in response to requests and invoices from one or all of the Defendants.

20. Phase I of the Art Agreement obligated one or all of the Defendants to produce the preliminary model, a clay maquette, by April 17, 2017.

21. One or all of the Defendants made multiple informal efforts to extend the deadlines to perform the contract due to other claimed competing concerns.

22. The parties had numerous discussions about the lack of progress by one or all of the Defendants.

23. Despite multiple promises by one or all of the Defendants, the Alumni Association was never presented with the maquette, the statue or any other usable product for the monies paid to the Defendants by the Alumni Association.

24. On March 9, 2018, Alumni Association sent a letter as a formal notice of default to one or all of the Defendants regarding the still-unperformed Art

Agreement. A copy of the March 9 letter is attached hereto as Exhibit “B” and incorporated by reference.

25. The Alumni Association received no response to its March 9, 2018 letter.

26. On June 1, 2018, the Alumni Association terminated the Art Agreement and demanded that one or all of the Defendants return the \$28,102.25 paid by the Alumni Association. A copy of the June 1 letter is attached hereto as Exhibit “C” and incorporated by reference.

27. Thereafter, the Alumni Association made multiple informal requests, demands and entreaties to one or all of the Defendants for return of the monies that the Alumni Association had paid under the Art Agreement.

28. For example, the Alumni Association sent another demand letter on July 19, 2018. A copy of that letter is attached hereto as Exhibit “D” and is incorporated by reference.

29. One or all of the Defendants have acknowledged monies are owed back to the Alumni Association by reason of nonperformance and/or breach of the Art Agreement.

30. Yet despite demand and acknowledgement, none of the Defendants have returned any of the funds due to the Alumni Association.

31. By reason of one or all of the Defendants' breach of the Art Agreement, the Alumni Association is entitled to recover the monies paid under the Art Agreement, plus pre- and post-judgment interest at the legal rate.

32. The Alumni Association is entitled to recover its court costs and reasonable legal expenses.

**COUNT I –
BREACH OF CONTRACT AGAINST VISBAL**

33. The Alumni Association repeats and realleges the preceding paragraphs as if restated fully here.

34. The Alumni Association entered a contract, *i.e.*, the Art Agreement, with Visbal.

35. In conjunction with the Art Agreement, Visbal acted under her own name and also under the fictitious trade name Visbal Fine Bronze Sculpture, Inc.

36. The Alumni Association performed under the Art Agreement.

37. To wit, it paid Visbal sums due and sums invoiced.

38. Visbal failed to perform under the Art Agreement.

39. To wit, Visbal failed to produce the maquette, the statue or any other usable product.

40. Further, Visbal failed to meet the deadlines imposed by the Art Agreement.

41. Visbal did not perform the Art Agreement but despite demand, she has not returned sums paid to her.

42. The Alumni Association has been damaged as a result of Visbal's actions.

43. The Alumni Association is entitled to compensatory damages in the form of all funds paid to Visbal, pre- and post-judgment interest and the costs and fees associated with this action.

44. The Alumni Association is entitled to consequential damages because the contract related to a one-time event of which Visbal was aware.

45. All preconditions to suit have been met.

**COUNT II –
BREACH OF CONTRACT AGAINST VISBAL SCULPTURE, INC.**

46. The Alumni Association repeats and realleges the preceding paragraphs as if restated fully here.

47. The Alumni Association entered a contract, *i.e.*, the Art Agreement, with Visbal Sculpture, Inc.

48. In conjunction with the Art Agreement, Visbal Sculpture, Inc., acted under its own name and also under the fictitious trade name Visbal Fine Bronze Sculpture, Inc.

49. The Alumni Association performed under the Art Agreement.

50. To wit, it paid Visbal Sculpture, Inc. sums due and sums invoiced.

51. Visbal Sculpture, Inc. failed to perform under the Art Agreement.
52. To wit, Visbal Sculpture, Inc. failed to produce the maquette, the statue or any other usable product.
53. Further, Visbal Sculpture, Inc. failed to meet the deadlines imposed by the Art Agreement.
54. Visbal Sculpture, Inc., did not perform the Art Agreement but despite demand, it has not returned sums paid to it.
55. The Alumni Association has been damaged as a result of Visbal Sculpture, Inc.'s actions.
56. The Alumni Association is entitled to compensatory damages in the form of all funds paid to Visbal Sculpture, Inc., pre- and post-judgment interest, and the costs and fees associated with this action.
57. The Alumni Association is entitled to consequential damages because the contract related to a one-time event of which Visbal Sculpture, Inc. was aware.
58. All preconditions to suit have been met.

**COUNT III –
BREACH OF CONTRACT AGAINST
VISBAL FINE BRONZE SCULPTURE, INC.**

59. The Alumni Association repeats and realleges the preceding paragraphs as if restated fully here.

60. The Alumni Association entered a contract, *i.e.*, the Art Agreement, with Visbal Fine Bronze Sculpture, Inc.
61. Visbal Fine Bronze Sculpture, Inc. is a foreign entity.
62. The Alumni Association performed under the Art Agreement.
63. To wit, it paid Visbal Fine Bronze Sculpture, Inc. sums due and sums invoiced.
64. Visbal Fine Bronze Sculpture, Inc. failed to perform under the Art Agreement.
65. To wit, Visbal Fine Bronze Sculpture, Inc. failed to produce the maquette, the statue or any other usable product.
66. Further, Visbal Fine Bronze Sculpture, Inc. failed to meet the deadlines imposed by the Art Agreement.
67. Visbal Fine Bronze Sculpture, Inc., did not perform the Art Agreement but despite demand, it has not returned sums paid to it.
68. The Alumni Association has been damaged as a result of Visbal Fine Bronze Sculpture, Inc.'s actions.
69. The Alumni Association is entitled to compensatory damages in the form of all funds paid to Visbal Fine Bronze Sculpture, Inc., pre- and post-judgment interest, and the costs and fees associated with this action.

70. The Alumni Association is entitled to consequential damages because the contract related to a one-time event of which Visbal Fine Bronze Sculpture, Inc. was aware.

71. All preconditions to suit have been met.

WHEREFORE, the Plaintiff United States Coast Guard Academy Alumni Association, Inc., demands judgment be entered against the Defendants Kristen E. Visbal, Visbal Sculpture, Inc. and Visbal Fine Bronze Sculptures Inc., jointly and severally, as follows:

- A. The principal sum of \$28,102.25;
- B. Consequential damages in an amount to be proven;
- B. Pre-judgment interest;
- C. Post-judgment interest;
- D. Costs of this action; and,

E. Such other and further relief as the Court deems just and proper.

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Dated: January 1, 2019

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