

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

EIDO T. SHIMANO ROSHI and
YASUKO AIHO SHIMANO,

Plaintiffs,

- against -

THE ZEN STUDIES SOCIETY, INC.,

Defendant.

Index No. 650025/2013

**VERIFIED AMENDED ANSWER
AND COUNTERCLAIMS**

Defendant the Zen Studies Society, Inc. ("ZSS" or the "Defendant"), by its undersigned counsel, for its Amended Answer to Plaintiffs Complaint and Counterclaims, states the following:

1. Defendant admits the allegations set forth in the last sentence of paragraph 1 of the Complaint and otherwise denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 1 of the Complaint.

2. Defendant admits that Yasuko A. Shimano was, until her retirement in 2010, the Director of the New York Zendo and otherwise denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 2 of the Complaint.

3. Defendant admits the allegations set forth in paragraph 3 of the Complaint.

4. Defendant denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 4 of the Complaint.

5. Defendant denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 5 of the Complaint.

6. Defendant admits that in or about May, 1965, Eido Tai Shimano Roshi became the leader of the ZSS, that ZSS then had few assets, that a Board of Directors was elected, that Shimano Roshi raised money for ZSS, that ZSS's membership grew, and that ZSS purchased a building and renovated it as a Zen Buddhist Temple. Defendant otherwise denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 6 of the Complaint.

7. Defendant admits that in or about 1972, ZSS obtained a 1400 acre parcel of land in Livingston Manor, New York which was named Dai Bosatsu Zendo (hereinafter, "DBZ") for use by the ZSS and its members as a spiritual retreat and this Property still belongs to the ZSS. Defendant otherwise denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 7 of the Complaint.

8. Defendant admits the allegations set forth in paragraph 8 of the Complaint.

9. Defendant denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 9 of the Complaint and affirmatively states that the alleged contracts referred to in Paragraph 9 (the "Contracts") were not valid and binding documents entered into at arms' length.

10. With respect to allegations set forth in the first sentence of paragraph 10 of the Complaint, the Contracts set forth their exact terms. Defendant denies knowledge or information sufficient to form a belief as to the allegations set forth in the second sentence of paragraph 10 of the Complaint.

11. Defendant admits the allegations set forth in paragraph 11 of the Complaint.

12. Defendant admits that the ZSS made pension and co-op maintenance, utility, and phone reimbursement payments to Plaintiffs on January 1, 2011, that the amount of the pension payments beginning on February 1, 2011, was 30% lower than the January 1, 2011, payment (which payments were agreed to in writing by Plaintiffs to be without prejudice to the ZSS' position that the Contracts were unenforceable), that the ZSS continued making such payments until August 2012, and then ceased doing so, and but that the ZSS has continuously made payments for health insurance, prescription insurance, life insurance, and co-op insurance. Defendant otherwise denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 12 of the Complaint. Defendant further avers (i) that Shimano Roshi breached his fiduciary duties by causing the ZSS to enter into agreements with himself and his wife (the "Deferred Compensation Agreements") that ZSS could not afford to pay because no funds had been set aside to meet this obligation; (ii) that the individual who signed the Deferred Compensation Agreements had a conflict of interest which was known to the Defendants; and (iii) that the Deferred Compensation Agreement was not negotiated at arms' length.

13. Defendant admits the allegations set forth in paragraph 13 of the Complaint.

14. Defendant denies knowledge or information sufficient to form a belief as to the allegations set forth in the first sentence of paragraph 14 of the Complaint and avers that Plaintiffs have failed to provide any documentation establishing their ownership of the property to which this sentence refers. Defendant admits that Shimano Roshi prepared the list described in the first sentence of paragraph 14 of the Complaint but avers that Plaintiffs have not produced any evidence that the items on this list belong to Defendants. Defendant admits that it has restricted Shimano Roshi's unsupervised access to DBZ but avers that it offered to let him

prepare such a list with supervision and that such a list was nearly completed by Shimano Roshi and a member of the ZSS Board in August of 2012.

15. Defendant admits that Plaintiffs have made a demand for the return of property they claim belongs to them and otherwise denies the allegations set forth in Paragraph 15 of the Complaint.

FIRST CAUSE OF ACTION

16. Defendant incorporates by reference the forgoing responses.

17. Defendant denies the allegations set forth in paragraph 17 of the Complaint.

SECOND CAUSE OF ACTION

18. Defendant incorporates by reference the forgoing responses.

19. Defendant denies the allegations set forth in paragraph 19 of the Complaint.

THIRD CAUSE OF ACTION

20. Defendant incorporates by reference the forgoing responses.

21. Defendant denies the allegations set forth in paragraph 21 of the Complaint.

FOURTH CAUSE OF ACTION

22. Defendant incorporates by reference the forgoing responses.

23. Defendant denies the allegations set forth in paragraph 23 of the Complaint.

FIFTH CAUSE OF ACTION

24. Defendant incorporates by reference the forgoing responses.

25. Defendant denies the allegations set forth in paragraph 25 of the Complaint.

26. Defendant denies the allegations set forth in paragraph 25 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

27. The causes of action asserted in the Complaint are barred, in whole or in part, by the doctrines of waiver, equitable estoppel, ratification, and unclean hands.

FIRST COUNTERCLAIM

28. Defendant repeats the foregoing allegations as if set forth herein.

29. Shimano Roshi was the spiritual leader of the ZSS.

30. As spiritual leader, Shimano Roshi had fiduciary and ethical duties to the ZSS members who were his students.

31. On numerous occasions, Shimano Roshi engaged in sexual relationships with students of his.

32. Shimano Roshi's sexual relationships constituted an abuse of Shimano Roshi's position.

33. Shimano Roshi's sexual relationships were contrary to his fiduciary duty and the ethical guidelines for ZSS that Shimano Roshi had approved.

34. Shimano Roshi's sexual relationships harmed the ZSS and ZSS members and students.

35. By having sexual relationships with students, Shimano Roshi caused damage to ZSS's national and international reputation.

36. After Shimano Roshi's sexual relationships became known to members of ZSS and the wider Buddhist community, contributions to ZSS fell precipitously.

37. Shimano Roshi's actions violated his fiduciary duty, his ethical duty and fully meets the elements for liability under the faithless servant doctrine.

38. The ZSS is entitled to payment of damages in an amount to be determined at trial for the material harm to its revenue and reputation caused by Shimano Roshi's violations of his fiduciary and ethical duties, and in particular his sexual misconduct.

SECOND COUNTERCLAIM

39. Defendant repeats the foregoing allegations as if set forth herein.

40. The ZSS is entitled to a disgorgement of all salary payments to Shimano Roshi during the period of his violations of his fiduciary and ethical duties, and in particular his sexual misconduct.

THIRD COUNTERCLAIM

41. Defendant repeats the foregoing allegations as if set forth herein.

42. The Shimano Roshi and Yasuko Shimano caused the ZSS Board to enter into an unfunded Deferred Compensation Agreement ("DCA"). On information and belief, Shimano Roshi caused the same counsel to represent both Shimano Roshi and Yasuko Shimano on the one hand, and the ZSS on the other hand, in "negotiations" for the DCA.

43. The DCA provides, *inter alia*, that Shimano Roshi and Yasuko Shimano receive for life 70% of their respective final year's salary, as well as a life tenancy in the ZSS' cooperative apartment, which was fully paid for by the ZSS. The DCA was entirely unfunded.

44. The DCA is not an enforceable agreement, at least because it was not entered into at arms' length, because it was unfunded, and because Shimano Roshi's violations of his fiduciary and ethical duties have caused the ZSS significant loss of reputation, membership, and donations, such that Shimano Roshi's actions have left the ZSS without sufficient funds or prospects such that payments made according to the DCA would violate the fiduciary responsibility of the ZSS Board of Directors.

45. The ZSS is entitled to a disgorgement from Shimano Roshi and Yasuko Shimano of all payments to them under the DCA.

46. Shimano Roshi and Yasuko Shimano should immediately vacate the ZSS' cooperative apartment and effect a full and official transfer of title to the ZSS or its agent.

FOURTH COUNTERCLAIM

47. Defendant repeats the foregoing allegations as if set forth herein.

48. On information and belief, Shimano Roshi and Yasuko Shimano repeatedly and deliberately misappropriated ZSS funds to pay off victims of Shimano Roshi's sexual misconduct, on two occasions of which Yasuko Shimano ordered payments of \$8000 and \$3000 to be paid directly to victims or their associates as compensation for harm caused by Shimano Roshi's sexual misconduct.

49. Yasuko Shimano ordered that the funds be drawn on the ZSS' operating expenses from donations and membership dues.

50. By misappropriating funds, both Shimano Roshi and Yasuko Shimano violated their fiduciary and ethical duties, causing harm to the ZSS.

51. The ZSS is entitled to payment of damages in an amount to be determined at trial for the harm to the ZSS caused by Plaintiffs' misappropriation of funds.

WHEREFORE, Defendants pray that this Court grant judgment, as follows:

(a) Dismissing Plaintiffs' Complaint.

(b) On the First Counterclaim, an Injunction ordering Shimano Roshi pay damages commensurate with the material harm the ZSS' revenue and reputation caused by Shimano Roshi's violations of his fiduciary and ethical duties, and in particular his sexual misconduct;

(c) On the Second Counterclaim, an Injunction ordering Shimano Roshi to repay to the ZSS all salary payments made to Shimano Roshi during the period of his violations of his fiduciary and ethical duties, and in particular his sexual misconduct;

(d) On the Third Counterclaim, an Injunction ordering (i) Shimano Roshi and Yasuko Shimano to repay to the ZSS all payments made to them under the DCA and (ii) Shimano Roshi and Yasuko Roshi immediately to vacate the ZSS' cooperative apartment and effect a full and official transfer of title to the cooperative apartment to the ZSS or its agent;

(e) On the Fourth Counterclaim, an Injunction ordering Shimano Roshi and Yasuko Shimano to pay damages commensurate with the harm to ZSS caused by their misappropriation of funds;

(f) An Award to the Defendant of \$2 million and

(g) An Award to the Defendant of its reasonable attorneys' fees and costs incurred in defense of this action.

Dated: New York, New York
February 21, 2013

By: /s/ Shane St. Hill _____
Shane St. Hill

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Attorneys for Defendant

VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)


Daniel Diffin, being duly sworn deposes and says:

I am president of the board of defendant Zen Studies Society in the action herein, and I am authorized to make this Verification on behalf of defendant. I have read the foregoing Amended Answer and Counterclaims and know the contents thereof and that the same are true as to my knowledge.



Daniel Diffin

Sworn to before me this 20th day
of February, 2013


Susan M. Gilchrist
Notary Public
SUSAN M. GILCHRIST

MY COMMISSION EXPIRES
01/11/2015