
PRINCIPAL PRICING MEDIATION

Attorney for Defendant Pat Windham

As recent law school graduate, you began practicing as a litigation associate at a small law firm. Your firm encourages new lawyers to take on small matters for family and friends without charge, or at low rates to build experience. You recently agreed to represent Pat Windham, a long-time neighbor and friend of your parents, in a mediation.

Windham recently retired as principal clarinetist in the Metropolis Philharmonic Orchestra. Windham's spouse arranged a retirement party in Majestic Mansion, a lovely historic but privately owned building, inviting extended family and friends. Unfortunately, some of Windham's nephews became quite raucous at the party, drank too much, and caused some property damage. The most costly was the destruction of the room's center chandelier, which shattered into pieces when one of the young hooligans decided to swing from one table to another hanging from the chandelier. The price tag for the chandelier was \$20,000 and the rest of the damage claimed made the total \$40,000.

While Windham recognized that their nephews were out of control, Windham thought the Majestic Mansion and its caterers (under subcontract) were partly to blame. After all, they continued to serve alcohol. In any event, they could have stopped the youths – they failed to maintain order in the house. Majestic Mansion blames Windham, as having assumed liability for your guests when you contracted for the party. The Mansion was also irresponsible if it wasn't insured.

While Windham hasn't made any offer to Majestic Mansion, they would pay \$5,000 or 6,000 but that's it! Windham thinks a judge or jury would take their side, as they couldn't control what happened. Still, at the suggestion of the court clerk's office, Windham agreed to attempt to resolve the dispute in mediation.

Unfortunately, Windham does not have \$40,000 in the bank (nor do the nephews). While Windham has some modest retirement savings, more than half of that has been lost in recent unwise stock market losses. Windham cannot withdraw the meager amount left without penalty. To make matters worse, Windham had tried to make some retirement money by investing with a symphony friend in an old factory property (less than half a block from the Mansion), with lovely, exposed brick walls. They financed some renovations to office space for part of the property but most of it remains vacant. The ground floor and basement space are entirely open and unfinished. Windham and their partner can no longer afford to pay to finish work there, so it looks like their retirement will be taken up with drywalling and painting. While reasonably handy, Windham does NOT enjoy this work. They would rather be playing the clarinet, and the partner would rather play his flute. Right now, Windham's bank account has less than \$25,000.00 in it and the bank that financed their ill-fated commercial real estate venture would claim a right to that (on their loan guarantee) if they stop paying the building mortgage.

Though Windham will draw a pension from the many years with the orchestra, it will be almost impossible to pay the commercial mortgage and eat, unless Windham can bring in

some renters or some income or both. Windham can't even think of selling the property, as is no longer worth what they paid for it.

You suspect if the mediation is not successful, Magnus may file suit against Windham, and perhaps against the nephews too.