

RenovationTrap.com

<http://www.RenovationTrap.com>

We're the newcomers to Washington who were brought to the verge of financial ruin by Windermere, the Northwest's largest real estate firm. We're attempting to turn our negative experiences into something positive for our community and the American Homestead. Our website is dedicated to a study of *Public Interest * Public Conscience * Public Duty

"You cannot submit to evil without allowing evil to grow. Each time the good are defeated, or each time they yield, they only cause the forces of evil to grow stronger. Greed feeds on greed, and crime grows with success. Our giving up what is ours merely to escape trouble would only create greater trouble for someone else." -- Louis Lamour, *A Man Called Noon*, Bantam, page 173.

December 27, 2008

Ms. Liz Luce
Director
Washington State Department of Licensing
PO Box 9020
Olympia, WA 98507-9020

Re: File Number 2006-07-0029-00REA

Dear Ms. Luce:

We want you to know that the real estate division of your department refuses to do its job: It refuses to discipline the agent and the brokerage involved in predatory and illegal conduct, even after a Jury Verdict and Judgment for conflict of interest, breach of fiduciary duty, and violation of the Consumer Protection Act has been issued against them. The agent and brokerage are **still** listing and selling real estate to unsuspecting members of the public.

Before we go further, here are some clarifying references:

RCW 18.235.005, *Intent*, states the mission of the Department of Licensing:

It is the intent of the legislature to consolidate disciplinary procedures for the licensed businesses and professions under the department of licensing by providing a uniform disciplinary act with standardized procedures for the regulation of businesses and professions and the enforcement of laws, the purpose of which is to assure the public of the adequacy of business and professional competence and conduct.

The Consumer Protection Act, RCW 19.86.020, Unfair competition, practices, declared unlawful, states:

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

The Consumer Protection Act, RCW 19.86.010, Definitions, states:

As used in this chapter:

(1) "Person" shall include, where applicable, natural persons, corporations, trusts, unincorporated associations and partnerships.

(2) "Trade" and "commerce" shall include the sale of assets or services, and any commerce directly or indirectly affecting the people of the state of Washington.

(3) "Assets" shall include any property, tangible or intangible, real, personal, or mixed, and wherever situate, and any other thing of value.

The letter is written with the understanding that the public is to be protected by the Department of Licensing from predatory and unlawful practices in the real estate industry. The DOL relies upon RCW 18.85, RCW 18.235, and RCW 18.86. Citizens may institute legal actions on the basis of RCW 18.86; RCW 18.85 and RCW 18.235 do not provide bases for citizens' legal action: those sections of the Code are in the purview of government. These several sections of the Code exist in the same universe, and if we are to believe, unlike Dickens' character, "the law is not an ass," these sections of the law must work together to achieve a complementary result.

History

* On October 17, 2005, I telephoned the Real Estate Regulatory Unit of the DOL and spoke to Karen Jarvis. I told her I wanted to report a real estate agent who had put together a home purchase/renovation package for us without telling us he had an interest in the contracting company he brought into the deal. I told Ms. Jarvis that we had discovered government documents indicating the agent was an original incorporator, Vice President, and 20 per cent shareholder in the contracting company. I also told her that the contracting company had caused severe damage to our home.

Ms. Jarvis told me that a real estate agent was perfectly entitled to run whatever business he wanted, in addition to his real estate business.

While taken aback by Jarvis' disregard for the public welfare, we nonetheless persevered. We continued our investigations and prepared a complaint for DOL.

* On July 10, 2006, we submitted our written complaint against Windermere agent Paul H. Stickney and Windermere Real Estate/SCA, Inc. Among other things, we reported Stickney's undisclosed conflict of interest, and that he had brought an unregistered contractor into a home purchase/renovation package he advised we undertake. Mr William Dutra was assigned to investigate, and we were told the investigation would take three weeks.

* On May 8, 2007, ten months later, we received a letter from Sandra Spencer, the Investigations Manager of Real Estate Investigations, telling us the investigation was complete. Ms. Spencer said that no action would be taken against Mr. Stickney, but that:

" . . . we reserve the right to reopen this file if a court of competent jurisdiction were to issue findings against any real estate licensees."

You can find a copy of that letter on our website, RenovationTrap.com.

We wrote back asking Ms. Spencer why no action was taken -- and asking if our information was insufficient.

* On August 15, 2007, Ms. Spencer replied, stating that our evidence was not "insufficient," but that

"the issues in this particular case did not meet the threshold level for allowing us to expend our limited legal resources pursuing formal administrative prosecution . . ."

We understood that to mean DOL didn't have the funds to chase after Stickney and the Windermere brokerage. Ms. Spencer implied that DOL's limited resources were needed to chase after far more egregious offenders.

Meanwhile, a lawsuit was scheduled for hearing in October 2008 in the Washington State Superior Court in Seattle. On October 30, the court issued a Jury Verdict and on November 14, the court issued a Judgment against Paul H. Stickney, licensed real estate agent, and Windermere Real Estate, SCA, Inc., licensed real estate brokerage. The Jury decided that Stickney had failed to disclose a conflict of interest and the undisclosed conflict of interest had caused us \$515,900 in damages. The Jury also found that Stickney violated the Consumer Protection Act.

* On December 1, 2008, we wrote to Sandra Spencer, enclosing the October 30 Jury Verdict and November 14 Judgment against Stickney and Windermere. I reminded Ms. Spencer of her May 8, 2007 statement

“ . . . we reserve the right to reopen this file if a court of competent jurisdiction were to issue findings against any real estate licensees.”

Since a “court of competent jurisdiction” found that Stickney's undisclosed conflict of interest had caused us damages and that Stickney had violated the Consumer Protection Act, and since spending DOL's “limited legal resources pursuing formal administrative prosecution” of Stickney had been obviated by our expensive lawsuit, we thought DOL would take action as Ms. Spencer suggested.

* On December 8, 2008, Karen Jarvis, Program Manager of the Real Estate Regulatory & Enforcement Unit, responded. Recall that Ms. Jarvis is the same person to whom we had spoken on 17 October 2006. Recall that Ms. Jarvis saw no problem with a real estate agent having his own construction company and bringing that construction company into a home purchase/renovation deal he was recommending to his purchasers -- without disclosing to the would-be purchasers his financial entanglements with the construction company.

In response to news of the Court's findings, Ms. Jarvis stated:

“It is not a requirement of the Real Estate Licensing Laws, RCW 18.85 & 18.235, for Stickney to advise you that he and [the contractor] were business partners in a land venture that is unrelated to your home purchase.”

“Furthermore, a violation of the Consumer Protection Act is not a violation of the Real Estate Licensing Laws.”

Questions and Concerns

1. Bogus “information.” Where did Ms. Jarvis obtain the “information” that Stickney and the contractor were business partners in a **“land venture that is unrelated”** to our home purchase? Did Ms. Jarvis invent it, or was it presented to her by a third party? We have been warned that Windermere's reach into the state's legislative, executive, and judicial infrastructure is great. We therefore wonder if Ms. Jarvis' disinformation came directly from Windermere's attorneys at the Demco Law Firm?

No statement about an “unrelated” land venture -- or any land venture -- appears in the October 30 Jury Verdict or the November 14 Judgement. Prior to trial, during a Summary Judgment hearing, Judge John Erlick refused to rule that the land venture was unrelated to the conflict of interest issue, even though Windermere's attorney requested the ruling. Moreover, at trial it was shown -- and the jury and the trial judge, Michael J. Fox agreed -- that Stickney's land venture with the contractor was very much related and should have been disclosed. Is Ms. Jarvis attempting to supplant the decision of two judges and a jury?

2. Ignoring RCW 18.86.030 and RCW 18.86.050. Citing the “unrelated” land venture, Ms. Jarvis not only ignored and misrepresented the findings of the court concerning Stickney’s undisclosed conflict of interest, but she ignored other sections of the Revised Code of Washington essential to the real estate profession.

RCW 18.86.030

(1) Regardless of whether the licensee is an agent, a licensee owes to all parties to whom the licensee renders real estate brokerage services the following duties, which may not be waived:

- (a) To exercise reasonable skill and care;
- (b) To deal honestly and in good faith;
- (d) To disclose all existing material facts known by the licensee and not apparent or readily ascertainable to a party; provided that this subsection shall not be construed to imply any duty to investigate matters that the licensee has not agreed to investigate;

RCW 18.86.050

(1) Unless additional duties are agreed to in writing signed by a buyer’s agent, the duties of a buyer’s agent are limited to those set forth in RCW 18.86.030 and the following, which may not be waived except as expressly set forth in (e) of this subsection:

- (a) To be loyal to the buyer by taking no action that is adverse or detrimental to the buyer’s interest in a transaction;
- (b) To timely disclose to the buyer any conflicts of interest;

What do RCW 18.86.030 and 18.86.050 mean to the DOL, Ms. Luce? To us and the jury and the judge they mean that a real estate agent can’t sell you a home in the morning and then take an action “adverse or detrimental” to your interest on his lunch break, when he is off the clock.

3. Ms. Spencer vs. Ms. Jarvis. Yet Ms. Jarvis ignores RCW 18.86, the only chapter that is likely to be the subject of a court’s finding. If RCW 18.86 and subsequent court findings are of no interest to DOL, why did Ms. Spencer tell us:

“ . . . we reserve the right to reopen this file if a court of competent jurisdiction were to issue findings against any real estate licensees.”

There is a conflict here. Who is right? Spencer or Jarvis? Or are they both wrong?

4. Consumer Protection Act and the Real Estate Industry. Now let us turn our attention to this statement by Ms. Jarvis:

“Furthermore, a violation of the Consumer Protection Act is not a violation of the Real Estate Licensing Laws.”

Please advise us: What law or precedent exempts real estate brokers and sales persons from the Consumer Protection Act? Allow us to show you that the Consumer Protection Act and the licensing laws are integrated and compatible.

Among the first words of the Consumer Protection Act (RCW 19.86.090) are these:

“Any person who is injured in his or her business or property by a violation . . . ”

Thus, a successful prosecution for CPA necessarily includes proof that the plaintiff has been "injured" by the defendant. Now when we return to RCW 19.235.130, subsection (4), we find that unprofessional conduct includes

"Incompetence, negligence, or malpractice that results in harm or damage to another or that creates an unreasonable risk of harm or damage to another."

Thus a finding that Stickney/Windermere violated the CPA necessarily infers that they have engaged in unprofessional conduct. The laws are perfectly consistent and fit together nicely. It is amazing that Ms. Jarvis does not recognize this fact among the few sections of the RCW over which she has responsibility.

Section 130 of RCW 18.235 provides that the following constitute unprofessional conduct::

- (1) The commission of any act involving moral turpitude, dishonesty . . .
- ...
- (9) Aiding or abetting an unlicensed person to practice or operate a business or profession when a license is required;
- ...
- (12) Failure to adequately supervise or oversee auxiliary staff, whether employees or contractors, to the extent that consumers may be harmed or damaged;

Both our complaint to the DOL and the findings of the Court amply showed Stickney and Windermere violated these subsections of RCW 18.235. The jury agreed that Stickney failed to disclose information that he had a duty to disclose, and that his years of malpractice in this regard with more than thirty other clients proved him to be a danger to the consumer public. See RCW 18.235.130 (1) above.

The court ruled in Summary Judgment that Stickney's contractor was unlicensed to practice or operate a business or profession when a license was required. See RCW 18.235.130 (9) above.

The Law of Real Estate requires the Broker to supervise the agent, and in all that time, Windermere had not brought a halt to Stickney's improper activity. See RCW 18.235.130 (12) above.

5. Equal Justice Under Regulation. Mr. Dutra, who investigated our complaint against Stickney, told us that DOL has no objective, written internal guidelines to follow when investigating complaints and coming to a finding. That lack leaves DOL enforcement actions open to capriciousness and back-room politics. Perhaps this is what we are witnessing in the conflicting statements of Ms. Spencer and Ms. Jarvis?

We just visited the DOL real estate disciplinary actions website:
<http://www.dol.wa.gov/about/disciplinary/disciplinaryrealest.html>

If the data there can be relied upon, we notice that many other agents were disciplined for offenses far less egregious than Stickney's offenses. It seemed that DOL was willing to expend its "limited legal resources" on those cases. And we also notice that DOL took note of "courts of competent jurisdiction" when announcing disciplinary actions against agents. Why does DOL countermand the Washington State Superior Court in our case?

6. DOL Functions As Windermere Support Group. In 2002, Windermere broker Joan Whittaker and agent George Rudiger sold Gary Kruger a rat-infested house. (See www.windermerewatch.com) Rudiger said he did not know the house was rat infested, but documents showed Rudiger had sold the house to a friend several years earlier, and knew of the rat problem then.

Kruger reported the matter to the DOL. DOL then (1) told Windermere's attorneys that Kruger was "hounding" the DOL to take disciplinary action against Windermere, and (2) told Kruger that Windermere had done nothing wrong. See letter to Judge Charles Mertel from attorney Matt Davis of the Demco Law

Firm, dated July 31, 2007, pg. 2, fifth paragraph. (Letter enclosed.) To Judge Mertel, Davis wrote of Kruger:

"He has hounded the Department of Licensing without success to pursue disciplinary action against Windermere."

John Demco, founder of the Demco Law Firm, is a Windermere broker. The Demco Law Firm boasts that John Demco was appointed by DOL to DOL's Task Force to review the Washington real estate licensing law. The Demco Law Firm's webpage states:

After more than two years of regular meetings, the task force proposed a complete re-write of the licensing laws (18.85 RCW). That proposal was adopted by the state legislature with minor changes and was signed by Governor Gregoire in 2008. The new licensing laws will take effect in 2010.

The Demco Law Firm also boasts many of its attorneys, including Matt Davis, are licensed DOL real estate law instructors. While Davis teaches others the law of real estate agency under DOL's imprimatur, he argues deviously in court that Windermere agents are not agents of Windermere. See, for example the case of Ali Kimiai, to be found in the left hand column of the RenovationTrap webpage.

All of this no doubt works out well for Windermere, but it is not so good for the citizens of Washington.

7. DOL Refuses to Enforce the Law. DOL's refusal to take action against Stickney in August, 2007 was not an issue of "limited legal resources." And when a "court of competent jurisdiction" issued its findings in 2008, DOL misrepresented and ignored those findings and still refused to take action. Even at this date, the DOL will not enforce the law upon Stickney and Windermere.

Ms. Spencer should have been honest on May 8, 2007. Despite irrefutable evidence DOL had to hand at that time, DOL has proved unwilling to discipline Stickney for even the most obvious infraction: "Aiding or abetting an unlicensed person to practice or operate a business or profession when a license is required." RCW 18.230.12, cited above.)

DOL should have told us when we first filed our complaint -- back in 2006 -- that no matter what Paul Stickney did, he was one of Windermere's favorite sons, and would never be disciplined by DOL.

In Summary

While pretending to be fair and non-partisan, DOL ignores blatant violations of Washington real estate law to protect Windermere from disciplinary actions; misstates the findings of courts of competent jurisdiction to protect Windermere from disciplinary actions; engages in off-the-record, mean-spirited conversations to snitch on citizens who "hound" DOL about Windermere; appoints the lead broker/attorney in the Windermere empire to rewrite Washington real estate law; and gives Windermere attorneys the DOL seal of approval to teach others real estate law while those same attorneys argue in court such laws don't apply. DOL acts more like a straw or front for Windermere than a regulatory agency protecting the public from predatory and illegal real estate practices.

Allow us to again cite the purpose of the Department of Licensing:

RCW 18.235.005:

Intent. It is the intent of the legislature to consolidate disciplinary procedures for the licensed businesses and professions under the department of licensing by providing a uniform disciplinary act with standardized procedures for the regulation of businesses and professions and the

enforcement of laws, the purpose of which is to assure the public of the adequacy of business and professional competence and conduct.

We request DOL do its job. The jury and judge have agreed that Paul H. Stickney and Windermere Real Estate/SCA Inc. are a menace to consumers and have caused actual damage by violation of the real estate laws.

We trust DOL will reconsider its stance and take disciplinary action against Paul H. Stickney and Windermere Real Estate/ SCA, Inc. Their behavior must be discouraged. DOL must resist political pressure exerted upon it by the Northwest's largest real estate firm. Please make sure DOL upholds the law and protects the public so to "assure the public of the adequacy of business and professional competence and conduct."

Sincerely,

Mark & Carol DeCoursey
8209 172nd Avenue, NE
Redmond, WA 98052

cc: Sen. Rodney Tom
Rep. Ross Hunter

Enc. Matt Davis' letter to Judge Charles Mertel, dated July 31, 2007