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Local Government & the Real Estate and Construction Industries

August 13, 2007

Ms. Sandra E. Spencer
Investigations Manager
Real Estate Investigations
PO Box 2445
Olympia, WA 98507-2445
Via Fax 360-586-0998

Re: Investigation No. 2006-07-0029-00REA: Paul H. Stickney

Dear Ms. Spenser:

Thank you for your letter of May 8. You are probably familiar with the old adage, "Not only must Justice be done, it must also appear to be done." In this vein, we'd like to know that justice was done during Mr. Dutra's investigation of Mr. Stickney, and so are asking for your help. We hope you will be able to answer some questions for us.

In your May 8 letter, you state:

"After examination of the documents and information available to us, we have determined that the evidence does not rise to the level to support the issuance of charges against Mr. Stickney's real estate license."

You also state:

"The Department of Licensing's authority is limited to taking action in accordance with the laws over which we have jurisdiction."

We did not request that charges be issued against Mr. Stickney's license. Rather, we brought several issues and ample documentation to DOL's attention – and your May 8 letter does not address those issues. Nor were we told why those issues were not addressed. Please understand the reason for our puzzlement.

One issue we raised was Mr. Stickney's undisclosed conflict of interest vis a vis Home Improvement Help, Inc. ("HIH") As you know, government records show Mr. Stickney was one of the incorporators of HIH in 2001 and its Vice President in 2004. He did not reveal that to us when he brought in HIH to remodel our new home during which time he was performing real estate services.

According to RCW 18.86.050:

" the duties of a buyers agent are (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."

<http://apps.leg.wa.gov/RCW/default.aspx?cite=18.86.050>

Please tell us how Mr. Dutra and DOL addressed the issue of Mr. Stickney's failure to disclose. In what way was our evidence insufficient? What might be sufficient evidence?

A second issue concerned Mr. Stickney's unprofessional conduct.

RCW 18.235.130

Unprofessional conduct — Acts or conditions that constitute.

The following conduct, acts, or conditions constitute unprofessional conduct for any license holder or applicant under the jurisdiction of this chapter:

(1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession or operation of the person's business, whether the act constitutes a crime or not.

(3) Advertising that is false, deceptive, or misleading;

(4) Incompetence, negligence, or malpractice that results in harm or damage to a consumer or that creates an unreasonable risk that a consumer may be harmed or damaged;

(10) Practice or operation of a business or profession beyond the scope of practice or operation as defined by law or rule;

(11) Misrepresentation in any aspect of the conduct of the business or profession;

<http://apps.leg.wa.gov/RCW/default.aspx?cite=18.235.130>

Could you please tell us how Mr. Dutra and DOL addressed the issue of Mr. Stickney's unprofessional conduct? If the evidence we provided was not sufficient, can you please tell us what evidence would be sufficient?

Another aspect of Mr. Stickney's unprofessional conduct concerns his promoting the unregistered contractor, Home Improvement Help. Aiding an unlicensed person to operate a business when a license is required is prohibited by RCW 18.235.130.

RCW 18.235.130

Unprofessional conduct – Acts or conditions that constitute.

(9) Aiding or abetting an unlicensed person to practice or operate a business or profession when a license is required;

<http://apps.leg.wa.gov/rcw/default.aspx?cite=18.235.130>

As you may know, it is a misdemeanor to operate as a contractor in Washington without being registered with the Department of Labor and Industries. (RCW 18.27.020.)

<http://apps.leg.wa.gov/RCW/default.aspx?cite=18.27.020>

Before the investigation started, Mr. Dutra told us that statements made to DOL were not taken under oath, but that people were “expected to tell the truth.” But what happens when people lie to the DOL? For example, Mr. Birgh (Mr. Stickney’s partner in HIH, and his partner in the Sammamish land deal) wrote an *unsolicited* letter to DOL on April 10 (enclosed). In that letter, Mr. Birgh stated that he incorporated HIH in 2001 but that HIH conducted no business until 2004.

“For different reasons, but particularly because my wife suffered a massive stroke and I had found myself her main caregiver, the corporation never got started, did not conduct any business at all and consequently turned inactive.” (Para. 3)

“In late spring of 2004 some construction opportunities came to pass that would require corporate licensing, bonding and insurance . . .” (Para. 4)

According to Paul Stickney’s sworn testimony of July 26, 2007, and despite what Mr. Birgh told DOL, HIH had been actively working as a Washington contractor since 2001. Mr. Stickney listed six jobs HIH performed between 2001-2004, valued at between 250,000 to \$465,000. We enclose a copy of Mr. Stickney’s testimony.

And we furnished you with an email Mr. Stickney sent Mark in February 2006, in which Mr. Stickney stated he was still using Mr. Birgh’s company, although it had changed its name. Labor and Industries records show that Home Improvement Solutions, Inc. was not registered as a contractor until May 9, 2006.

<https://fortress.wa.gov/lni/bbip/Detail.aspx?License=HOMEIIS945KZ>

According to Mr. Stickney’s own testimony, then, for at least four years – from 2001 to 2004 -- he aided and abetted an unlicensed business to operate when a license was required. And he was doing the same again in 2006.

We’d feel much more comfortable with DOL’s conclusions if the issues we raised were addressed.

Sincerely,

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

Enc: Richard Birgh’s April 10, 2007 letter
Paul Stickney’s July 26, 2007 sworn testimony