

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 08-313

Complainant: No. 1204310757A

Judge: No. 1204310757B

ORDER

The commission reviewed the complaint filed in this matter and found no evidence ethical misconduct on the part of the judge.

The complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: April 7, 2009.

FOR THE COMMISSION

\s\ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on April 7, 2009.

This order may not be used as a basis for disqualification of a judge.

COMPLAINT AGAINST A JUDGE

CJC -08 - 3 13

(Attachment to complaint of 12/08/2008

I feel that Judge discriminated me and made a decision based upon my national origin as well as the national origin of the witness (While we are both US citizens, we both talk with a strong accent.) I did not get a fair hearing and was not allowed to present my case.

Statement of Facts

On (6 days after the hearing) I received a Notice of Court Date from the Justice Court. The envelope was showing a 6 digit ZIP code (895217). This Notice said:

“This matter has been assigned to and will be heard by Justice of the Peace”

However, the case was heard and a decision was made by a pro temp hearing officer. When I called the Justice Court after the hearing I was told that the elected judge does not hear any small claims cases.

At the court hearing I tried to explain to the hearing officer that I am no longer related to the witness but he cut me off with the words “This is irrelevant”.

Again, he cut me off, when I tried to make an opening statement in order to present my case. After I started to say: “On November, 18 (...)” he interrupted me with the words: “You are only allowed to ask questions to the witness.” When the witness tried to explain what happened, she was cut off as well with the words “You are only allowed to answer questions.” At the same time the defendant was allowed to present her case without being interrupted. Even when the defendant talked about details that were totally unrelated to the case, the hearing officer listened without putting

any pressure on her: For example when she talked about the "open house" at the property where we initially met, the failed deal with a previous client who was interested in the property repair issues, my denied mortgage application and the loss that I suffered because I had to pay a prepayment penalty for the early withdrawal of my CDs, etc, etc.

At the end of the hearing I was allowed to ask questions to the defendant but again interrupted with the words "(...) *make it short, we don't have so much time anymore.*"

Again, the hearing officer did not allow me to make an opening or closing statement. When I complained about the fact that the defendant never submitted a copy of her response to me as she was supposed to do by the rules, the hearing officer laughed: "*This is small claims court, you expect too much...*"

Defendant never filed a response to my complaint.

The hearing officer's final words were: "***I am going to dismiss this case, because of the lack of evidence and because there is no written agreement.***"

The following evidence was presented:

- (1) email by defendant admitting that she agreed to pay 1% of the sales price to plaintiff.
- (2) Defendants own testimony admitting that she agreed to pay 1%
- (3) Sworn testimony of witness testifying that defendant promised to pay 1% of the sales price after COE ("close of escrow") if plaintiff would not involve his own realtor.
- (4) Testimony of witness testifying that plaintiff at no point in time said anything that would void this oral agreement. (Testimony of did not support the

defendants statement that plaintiff made a suggestion that he was no longer interested in the 1%).

- (5) Defendant did not have any evidence for her version that I was no longer interested in the 1% (\$ 1,930.-) when I explicitly asked her at the court hearing “*What evidence can you show to court that I said something to suggest that I wanted you to keep the \$ 1,930.- ?*” - Her answer was “*No, I don't have any evidence to present to the court*”

The witness for the defendant was identical with the alleged representative for I don't know who this person was, especially since never filed a response to my complaint and since she did not produce any documents in Court that would show that she was an authorized representative. However, this person testified that she was a trainer with the company and that defendant could not have promised to pay 1% of the sales price after COE because this would have been against the law and she could have lost her license because of this.

The hearing officer's dismissal based upon the “*lack of evidence*” shows that he did not take the sworn testimony of the witness into consideration, obviously because of her accent that revealed her national origin as well as her foreign appearance.

I believe that even in small claims court the justice system should make sure that a hearing follows certain procedures, giving the same rights to either party, especially the chance to present the case without being cut off.

The sworn testimony of a witness who is not a natural born US citizen (and not Arian...) should count as much as the testimony of a white person who was born and raised in this country. The fact that in this case on the other side the defendant did not have any witnesses or other evidence for her version of the story can not be interpreted as “*lack of evidence*”. The testimony of the defendant's witness that could not have made the oral agreement “*because it would have been against the law*” is an assumption and does not prove that she did not do it. Since this witness was not present during the transaction her testimony was completely worthless. However, the

hearing officer gave her all the time to talk without cutting her off or interrupting her. Her opinion that our oral contract was invalid because it was not done in writing, gives ground for a judgment based upon professional negligence:

I am not a trained real estate professional, even if I buy, sell and rent houses on a small scale. I have never gone to real estate school or received any kind of education that is related to real estate. When I do business, I entirely rely on real estate professionals, in this case _____ and _____. If it is true that oral agreements don't count in real estate transactions, (the unknown _____ employee did not specify the law that makes any oral contracts between a realtor and his client invalid) - it should have been made clear by _____ when actually entering into the oral agreement. _____ was representing my interests in this real estate transaction since she was my realtor - if she decided not to include our oral agreement into the written contract she valued her own interests more important than her clients interest. At no point in time _____ mentioned that our agreement had to be done in writing when committing to pay me the \$ 1,930.- after COE. Since it was her who filled out the contract form, it would have been her duty to include our agreement, especially if it is true that oral agreements have to be done in writing. It does not matter if _____ (being the buyer's and the seller's realtor at the same time) entered into our oral contract due to the lack of knowledge about the validity of oral agreements in real estate transactions or if she did this in bad faith. What matters is that she made a promise in order to motivate me to keep my own real estate agent out and to double her commission.

The principle "*Pacta Sunt Servanda*" should also count for US citizens that were not born in this country. The _____ Court's dismissal shows that obviously it is OK to make false promises to citizens with an accent in order to maximize the profit.

I am asking the Arizona court system to set up a new hearing (with a change of venue) and to give me a fair trial.