

FILED

09 FEB 06 AM 10:43

KING COUNTY
SUPERIOR COURT CLERK
E-FILED

CASE NUMBER: 07-2-08789-3 SEA

RECEIVED
FEB 10 2009

ATTORNEY GENERAL'S OFFICE
CONSUMER PROTECTION
SEATTLE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON,

Plaintiff,

NO. 07-2-08789-3 SEA

vs.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

JOSEPH KAISER, and HEIDI M.
KAISER, husband and wife, as
members of a marital community with
named defendant, G. HOBUS
INVESTMENTS, LLC; BOBO BUYS
REAL ESTATE, LLC; PRE FLOP
LLC; UNCLAIMED FUNDS, Inc., a
Washington Corporation,

Defendants.

THIS MATTER came before the Court on December 8th – 11th, 2008 and January 12th
– 13th, 2009. Plaintiff appeared through James T. Sugarman and Jason E. Bernstein, Assistant
Attorneys General. Defendants appeared through their attorney, David J. Britton.

1. The Court bifurcated this matter into two phases - liability and remedies. *See*
Stipulation and Order, August 6, 2008. The Court has also granted Plaintiff State of
Washington's Motion for Partial Summary Judgment. *See Order, November 21, 2008*. That
Order found that 24 of Defendants' business practices violated the Consumer Protection Act,
RCW 19.86.020. The findings here concern liability for matters not resolved by the Partial
Summary Judgment Order.

1 2. Defendant Joseph Kaiser is a real estate investor. Among other practices, he
2 solicits homeowners facing real property tax foreclosure to sell their home to him in a
3 transaction he calls a "partial interest deal" or "partnering up." These acts constitute trade or
4 commerce as defined by the Consumer Protection Act, RCW 19.86.010(2).

5 3. The Court has already found that Kaiser's transactions do not result in
6 homeowners keeping their home. In the Order Granting Plaintiff's Motion for Partial
7 Summary Judgment, the Court found that Mr. Kaiser violated the Consumer Protection Act,
8 RCW 19.86.020, by soliciting homeowners with false promises to help them keep or save their
9 home when partial interest deals do not actually result in the homeowner keeping or saving
10 their home.

11 4. The Court also found that, in the course of creating partial interest deals,
12 Mr. Kaiser violated the Consumer Protection Act by falsifying real property excise tax
13 affidavits, ¶ 6, and by acting as both trustee and co-beneficiary seeking a profit from the trust.
14 ¶ 7.

15 5. In partial interest deals, Kaiser solicits homeowners facing tax foreclosure and
16 induces them to place their home in a trust, with Kaiser, through his business entities, as trustee
17 and co-beneficiary. Mr. Kaiser does not pay the homeowners for their homes. Once title to the
18 home is in Kaiser's title and control, he pays the delinquent property taxes and stops the sale of
19 the home.

20 6. The land trust and accompanying documents that Kaiser created give him
21 complete title and control over the homes and leave the former owners with only two tenuous
22 rights: 1) the right to some percentage of the sales proceeds if Mr. Kaiser chooses to sell the
23 property, and 2) the right to occupy the property for one to three years, provided the former
24 owner pays rent.

25 7. These two rights are tenuous because the documents contain hair-trigger default
26 provisions which void these rights if the former homeowner is even five days late on a rental

1 payment or violates any of the other terms contained in the numerous documents Mr. Kaiser
2 has them sign.

3 8. Mr. Kaiser testified that every partial interest deal he has created is actually in
4 default. (Kaiser transcript 80:2) Therefore, none of the former homeowners maintains their
5 right to possession of the property or a percentage of the proceeds if Kaiser chooses to sell it.

6 9. By virtue of the lease provisions and other contractual provisions for
7 reimbursement of all of Mr. Kaiser's expenses, his terms entitle him to receive either the entire
8 home vacant or his share of the home's equity without having ultimately paid any money.

9 10. Mr. Kaiser admits that he maintains all control over the possible re-sale of the
10 home, deciding when it is sold, to whom it is sold, and for how much it will be sold.

11 11. Homeowners who enter the transactions believing they are saving their homes
12 are actually stripped of any ownership interest and are not even given a right of first refusal to
13 buy back their home. Mr. Kaiser can sell the property to anybody he wants at any price.

14 12. No fully-informed person, not acting under compulsion would enter a
15 transaction with such onerous terms.

16 13. The homeowners clearly have no idea as to the specifics of partial interest
17 transactions. Some believed they were only getting loans. Some believed Mr. Kaiser would
18 get some portion of their property if they did not repay him for paying the delinquent taxes.
19 None realized they had lost all title and control of the property.

20 14. When Mr. Kaiser and his associates did describe partial interest transactions to
21 homeowners they made only minimal and vague descriptions such as: 'we will pay the
22 property taxes and then be 50/50 partners', or that people repay by refinancing or selling the
23 home and splitting the proceeds. These descriptions were misleading because they failed to
24 include that Kaiser alone decides whether the owner can repay him and whether and for how
25 much the property will be sold, and that no one has actually regained title from Kaiser.

26

1 15. Mr. Kaiser has never sold a property back to someone who entered a partial
2 interest deal with him. In roughly four of the transactions, out of a total of 30 as estimated by
3 Kaiser, Kaiser's former partners returned title after entering a Consent Judgment with the
4 State. (Kaiser transcript 76:20 – 78:9) Kaiser was not involved in these transactions.

5 16. Mr. Kaiser admitted that he regularly does not provide copies of the documents
6 homeowners have signed. He also uses mobile notaries to complete his transaction and these
7 notaries do not provide copies of the documents signed. (Kaiser transcript 88:3 – 89:9) The
8 terms are therefore concealed from the homeowners once they have entered the transaction
9 making it unclear what their rights and responsibilities are.

10 17. It is a violation of the Consumer Protection Act to misrepresent the terms of a
11 transaction or to fail to disclose material terms. *Ralph Williams*, 87 Wn.2d 298 (1976); *Holiday*
12 *Resort Community Ass'n v. Echo Lake Assocs., LLC*, 134 Wn. App. 210, 226, 135 P.3d 499
13 (2006), *review denied* 160 Wn.2d 1019, 163 P.3d 793 (2007); *Testo v. Russ Dunmire*
14 *Oldsmobile, Inc.*, 16 Wn. App. 39, 51, 554 P.2d 349 (1976).

15 18. In the course of soliciting homeowners to enter his partial interest transactions
16 Mr. Kaiser omitted the following material facts:

- 17
- 18 a. No one has ever successfully re-purchased or otherwise regained their home
from Mr. Kaiser;
 - 19 b. The owner can not refinance to buy Kaiser out because they no longer own the
20 house.
 - 21 c. The owner will never know how much they have to pay Kaiser back until
Kaiser decides to sell their home and sets the sales price.
 - 22 d. Kaiser is entitled to recoup the money he spent on the delinquent taxes, and any
23 other expenses, as well as back rent, all of which will be deducted from the
24 sales price before the profit is split 50/50, or whatever amount is set in the
documents.
 - 25 e. Kaiser decides what the sales price will be. It is in his full control to set how
26 much profit he will make, and how much the former owner will have to come
up with to buy him back. The owner has no right to set the price and has no
more right to purchase the home than does any other party. If Kaiser can find

1 someone willing to buy the home for more than the owner is able to pay, he can
2 sell it to that person.

3 f. The former owner will only have the right to live in their home for 1 year, or in
4 a few cases 3 years.

5 g. The former owner will have no right to a partial interest of the sale proceeds and
6 will have to vacate their home immediately if they are 5 days late with rent or
7 violate any other term of the deal.

8 19. It is a violation of the Consumer Protection Act to create grossly unfair or
9 unconscionable contracts. *Magney v. Lincoln Mutual Savings Bank*, 34 Wn. App. 45, 57, 659
10 P.2d 537, review denied, 99 Wn.2d 1023 (1983) (citing *Federal Trade Comm'n. Sperry &*
11 *Hutchinson Co.*, 405 U.S. 233, 244, 92 S.Ct. 898, 31 L. Ed. 2d 170 (1972)); *Ralph Williams*,
12 87 Wn.2d at 320.

13 20. Under Washington law, when consideration paid for homes is grossly
14 inadequate the Court may declare the transaction unlawful. *Miebach v. Colasurdo* 102 Wn. 2d
15 170, 177-78, 685 P. 2d 1074 (1984); *Roger v. Whitham*, 56 Wash 190, 193, 105 P. 628 (1909);
16 *Lovejoy v. Americus*, 111 Wash. 571, 191 P. 790 (1920).

17 21. Mr. Kaiser's contracts were grossly unfair given the following facts:

18 a. Mr. Kaiser is an experienced real estate professional who is an expert in
19 obtaining properties subject to foreclosure.

20 b. Mr. Kaiser targets homeowners facing the imminent loss of their home through
21 real estate tax foreclosure. Thus, the persons he does business with are by
22 definition in financial distress.

23 c. Mr. Kaiser presents the homeowners with multiple complex and sometimes
24 contradictory documents. He often does not give the homeowners copies of the
25 executed documents so that they can refer to and understand the terms of the
26 deals they have entered.

d. Mr. Kaiser pays minimal or no consideration for the homes. He pays the
delinquent taxes but, because he has become titleholder and co-beneficiary of
the land trust, this is more to his benefit than the former owner's. If the
property is sold for taxes, Mr. Kaiser will lose his interest completely while the

1 former owner would receive any excess money from the sale after taxes are
2 paid. RCW 84.64.080.

3 e. No provision in Mr. Kaiser's Partial Interest documents actually requires him to
4 pay the delinquent property taxes in exchange for his obtaining ownership of the
property.

5 f. Under the terms of his partial interest deals Mr. Kaiser ultimately obtains some
6 or all of the equity in the home for no personal outlay by him. Any money he
7 advances to pay taxes or otherwise spends on the property is refunded to him
before the profits are split.

8 22. Mr. Kaiser's acts enumerated above affect the public interest because they are:

9 1) in the course of business; 2) evince a pattern and generalized course of conduct; 3) have a
10 substantial potential for repetition; and, 4) affect many consumers.

11 23. For the foregoing reasons, the Court finds that Defendant Joseph Kaiser's
12 partial interest deals, as described above, are unfair and deceptive in violation of the Consumer
13 Protection Act. RCW 19.86.020.

14 24. The Court also heard testimony regarding four other deals by Kaiser where the
15 homeowner was facing real property tax foreclosure. Although the details vary, each one of
16 the transactions was unfair and deceptive in violation of the Consumer Protection Act,
17 RCW 19.86.020.

18 25. In the Prieto transaction Kaiser promised to save Ms. Prieto's home but instead
19 had the homeowner deed it directly to his business entity, Fiscal Dynamics as trustee, through
20 a quitclaim. Ex. 10, page 2. Kaiser also recorded this quitclaim in the county land records.
21 However, Kaiser never actually set up a land trust. Kaiser did not pay the homeowner any
22 money for the home, he did he pay any of the delinquent property taxes, and he did he not pay
23 any of the delinquent mortgage payments. According to Ms. Prieto the delinquent taxes were
24 paid by her mortgagee and she is now paying them back. Kaiser kept the home even when he
25 was told, six months later, by Ms. Prieto-Palomino's attorney that the transaction violated a
26

1 bankruptcy stay. Ex. 10, page 19. Even as of the time of trial, three years after the transaction,
2 Kaiser testified that he has not released his deed to the property.

3 26. In the Nina Padgett transaction Kaiser promised Ms. Padgett that he would save
4 her home from tax foreclosure by paying delinquent taxes on two parcels she owned. Kaiser
5 testified that when he found out there were liens on the property, he changed the terms of the
6 deal to one where Ms. Padgett would deed both parcels to him and in exchange she would be
7 allowed to live in her home for three months. Ex. 5, pages 1 – 2. (Kaiser testimony p. 84:8 –
8 12, 85:12 - 15) Even if such a deal were conscionable, Kaiser produced no documents
9 showing Padgett’s right to occupy the property after the tax sale. Ultimately, Padgett’s home
10 was bought at foreclosure by a third party who intends to evict her, but Kaiser still maintained
11 at trial that he has “saved” her home. (82:20 – 25)

12 27. In the Frank and Gloria Martinez transaction Mr. Kaiser claimed he saved Mr.
13 Martinez’ home. Ex. 11, page 9 – 10. What Kaiser actually did was purchase the home at the
14 foreclosure sale and then had Mr. Martinez sign over his rights to the overage money from the
15 foreclosure sale. Ex. 6, page 2. As a result, Kaiser obtained both the house and the \$45,428.47
16 in overage money he had paid at the auction. Ex. 6, page 26. Kaiser never sold the house back
17 to Martinez even when Martinez obtained a realtor and made an offer. Kaiser then sent
18 Martinez an eviction notice demanding Martinez immediately pay \$2,700 in rent or vacate the
19 property and Martinez vacated. Ex. 6, page 42. Kaiser was able to obtain Martinez’s home free
20 and clear merely by paying \$4,571.53 in delinquent taxes.

21 28. In the Clare and Estevan Garza transaction Mr. Kaiser had the Garzas quitclaim
22 their home to one of his business entities, G. Hobus Investments, LLC, in fee simple for no
23 money, but gave them 12 months to rent it back. Ex. 7, page 40. Kaiser agreed to pay the
24 delinquent property taxes once he owned the property. Although Kaiser told the Garzas the
25 transaction was designed for the Garzas to keep their home, a document regarding Kaiser’s
26 financing of the tax amount indicates Kaiser intended to resell it immediately. Ex. 7, page 10, first

1 paragraph. Kaiser claims the Garzas now have a continuing right to buy back the home but there
2 is no such right reserved in the deeds or sales contract. There is only a letter dictated to and
3 signed by Clara and Estevan Garza where the Garzas state that they believe they have "6 to 8
4 months to buy them out" meaning Kaiser's business entity, G. Hobus Investments, LLC. No
5 terms for this buy out are mentioned and Kaiser has not presented any document where he
6 indicates how, when, or for what amount the Garzas can repurchase their home. In the event
7 Kaiser decides to sell the property the Garzas have no greater right to buy the home than any
8 stranger to the deal, and Kaiser may set the terms of the re-sale at any price and on any conditions
9 he chooses.

10 29. Mr. Kaiser's chief defense to these transactions is that they are not unfair under the
11 CPA because he almost never actually evicts the people who enter partial interest deals, even
12 though his contract terms allow him to. Kaiser admits he evicted one homeowner. Another,
13 Frank Martinez, testified that he complied with Kaiser's notice to vacate.

14 30. There is no doubt that Mr. Kaiser's documents give him full ownership and
15 control of the homes. Under his contract terms, Mr. Kaiser has the right to evict each of the
16 former homeowners after 12 to 36 months, depending on the lease.

17 31. There is also evidence that the reason Kaiser does not evict is not due to any
18 benign intention or recognition of the hardship it would cause. Mr. Kaiser admits that he has
19 foreclosed on people who participate in other transactions with him. (Kaiser transcript, 9:16 -
20 22). However, he does not evict people in partial interest deals because he does not want to
21 submit his deals to the scrutiny of the Courts. (Kaiser transcript, 10:7 - 11:5).

22 32. Whether Mr. Kaiser intends to enforce his contractual terms is irrelevant to a
23 determination of whether those terms violate the Consumer Protection Act. Intent to deceive is
24 not a required element of a CPA claim, nor is actual deception. *Hangman Ridge Training*
25 *Stables v. Safeco*, 105 Wn.2d 778, 785, 719 P.2d 531 (1986); *Nelson v. Nat'l Fund Raising*
26 *Consultants, Inc.*, 120 Wn.2d 382, 392, 842 P.2d 473 (1992); *see also e.g., People v. McKale*

1 25 Cal.3d 626, 635 - 636, 159 Cal.Rptr. 811, 602 P.2d 731 (1979) (Trailer park rules that
2 violate state regulations are unfair and deceptive even though defendants had not tried to
3 enforce them).

4 33. Further, when the State brings a CPA action, it is not required to prove
5 causation or injury, *Nutall v. Dowell*, 31 Wn. App. 98, 110, 639 P.2d 382, *review denied*, 97
6 Wn. 2d 1015 (1982), and the cessation of wrongful practices does not prevent the Court from
7 finding a violation and providing relief under the Consumer Protection Act. *State v. Ralph*
8 *Williams Northwest Chrysler Plymouth Inc.*, 82 Wn.2d 265, 271 - 271, 510 P.2d 233 (1973).

9 34. Defendants also violated the CPA by using an automatic dialing and
10 announcing device for purposes of commercial solicitation. RCW 80.36.400 (2).

11 35. Mr. Kaiser admitted that he uses a computer-based program to automatically
12 dial homeowners facing tax foreclosure. The program plays a pre-recorded message. Mr.
13 Kaiser's purpose in sending these messages was to solicit for his foreclosure-related services.
14 (Kaiser transcript 65:21 - 68:1) Violations of this law are also violations of the Consumer
15 Protections Act. RCW 80.36.400 (3).

16 DONE IN OPEN COURT this _____ day of _____, 2009.

17
18
19 _____
Honorable Michael J. Trickey,
Judge of the Superior Court

20 Presented by:

Approved as to form and notice
of presentation waived:

21 ROBERT M. MCKENNA
22 Attorney General

23
24 _____
JAMES T. SUGARMAN, WSBA #39102
25 JASON E. BERNSTEIN, WSBA #39362
Assistant Attorney General
26 Attorneys for Plaintiff
State of Washington

23
24 _____
DAVID J. BRITTON, WSBA # 31748
Attorney for Defendants

Case Number: 07-2-08789-3
Case Title: WA STATE OF VS FISCAL DYNAMICS INC ET AL
Document Title: OTHER
User's Name: Michael Trickey
Filed Date: 2/6/2009 10:43:13 AM

Judge Signed

Signed By Judge: Michael Trickey
WSBA #: N/A
Date: 2/6/2009 10:42:55 AM
Reason: I am a judicial officer and am signing this order
Certificate hash: C29E425FA2940DCE136E78497D6AD5F8A5390E88
Certificate effective date: 3/20/2008 1:01:53 PM
Certificate expiry date: 3/20/2010 1:01:53 PM
Certificate issued by: C=US, O=State of Washington PKI, OU=State of
Washington CA, CN=Washington State CA B1