

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

v.

CLA ESTATE SERVICES, INC.; CLA USA
INC.; and MITCHELL REED JOHNSON,
individually and in his marital community,

Defendants.

NO. 18-2-06309-4 SEA

ORDER GRANTING THE STATE
OF WASHINGTON'S MOTION
FOR PRELIMINARY INJUNCTION

(Clerk's Action Required)

CLA ESTATE SERVICES, INC., AND CLA
USA, INC.

Counter-Plaintiffs,

v.

ROBERT W. FERGUSON, in his official
capacity as Attorney General of the State of
Washington,

Counter-Defendant.

THIS MATTER came before the Court on Plaintiff State of Washington's Motion for Preliminary Injunction. The Court reviewed the foregoing motion, responses and replies if any, and heard argument of counsel on August 24, 2018. Having considered the foregoing and being familiar with the records and files herein; the Court hereby enters the following Findings of Fact, Conclusions of Law, and Order.

1 **I. FINDINGS OF FACT**

2 1. Defendant CLA Estate Services, Inc. and Defendant CLA USA, Inc.
3 (collectively, CLA) are both Texas corporations, and are both registered to do business in
4 Washington.

5 2. CLA Estate Services, Inc. has been conducting estate planning seminars or
6 workshops to Washington consumers since approximately 2009. CLA markets its seminars as
7 educational workshops that provide attendees a free meal, and cover topics such as the pros and
8 cons of wills and trusts, how to avoid probate, controlling distribution of your estate, avoiding
9 joint bank accounts, long-term health care concerns, tax reduction planning, and annuities and
10 life insurance.

11 3. CLA's sales representatives who conduct the seminars hand out workbooks to
12 consumers who attend the seminars that address a number of estate planning issues, and that
13 contain visuals and testimonials from purported experts who opine about the benefits of
14 revocable living trusts.

15 4. CLA's sales representatives conducting the seminars are not attorneys, nor are
16 they employed by attorneys licensed to practice law in Washington.

17 5. CLA's workbooks and sales representatives represent probate and trust
18 administration in a manner that portrays revocable living trusts as universally better estate
19 distribution documents than wills or other estate distribution documents. The representations
20 create the net impression that a revocable living trust will necessarily and universally protect
21 assets and privacy, and will save consumers time and money.

22 6. CLA's workbooks and representations create the net impression that probate is
23 rife with problems that can be avoided with a revocable living trust. CLA portrays probate as
24 portrayed as necessarily more time consuming, public, costly, and emotionally difficult, and
25 more likely to reduce assets available to heirs in ways that can be avoided with a revocable living
26 trust.

1 7. CLA’s workbooks contain quotes from purported “experts” such as Suze Orman,
2 Consumer Reports, and the Wall Street Journal opining that a living trust is more advantageous
3 than a will, but there is no indication these purported experts are referring to or even familiar
4 with Washington law.

5 8. During the seminars, CLA sales representatives encourage consumers to meet
6 with them for a one-on-one meeting for a “Complimentary Review of Your Personal Situation”
7 at which time the sales representatives again tout the benefits of a revocable living trust and
8 market CLA’s “Lifetime Estate Plan,” which costs between \$2,000 and \$3,000. CLA represents
9 its Lifetime Estate Plan as providing (1) a referral to an “independent” attorney to prepare estate
10 distribution documents; (2) initial and 90-day reviews of the consumer’s estate plan; (3) annual
11 lifetime reviews to ensure the estate plans are up to date; and (4) a meeting with survivors
12 following the consumer’s death to help settle the estate.

13 9. When a consumer purchases a Lifetime Estate Plan, the CLA Estate Services,
14 Inc. sales representative collects information about the consumer’s family, assets, intended
15 beneficiaries, asset distribution wishes, and any particular requirements, such as a special needs
16 trust. This information is shared with CLA’s referral attorney by mail in a self-addressed,
17 stamped envelope provided by CLA or through an online portal managed by CLA.

18 10. Although CLA describes the referral attorney as “independent,” CLA approves
19 some referral attorneys’ retainer letters and estate planning documents and CLA describes itself
20 to consumers as the “arms and legs” of the attorney. It has consumers sign releases of information
21 to allow CLA agents to communicate with the referral attorney to coordinate estate-planning
22 services. CLA trains its staff to keep in close communication with referral lawyers to “[keep]
23 deals together.” Some consumers who purchased CLA’s Lifetime Estate Plan and were referred
24 to a CLA lawyer had no communication with the lawyer.

25 11. CLA USA, Inc. is a financial affiliate of CLA Estate Services, Inc. and has been
26 marketing annuities and other insurance products in Washington since approximately 2010.

1 12. After a consumer purchases a Lifetime Estate Plan and a CLA referral attorney
2 creates estate distribution documents, a CLA USA, Inc. insurance agent delivers the estate
3 distribution documents to the consumer, or the attorney sends the documents to the consumer.
4 The agent meets with the consumer, ostensibly to review and notarize the estate documents.
5 However, former CLA agents and consumers describe this meeting and subsequent meetings
6 with CLA agents as a marketing opportunity for the agents, including Defendant Johnson, to
7 aggressively market high commission annuities and life insurance.

8 13. During this and subsequent meetings, CLA USA, Inc. insurance agents also
9 gather information from consumers about requested changes or modifications needed to estate
10 distribution documents and then convey that information to the CLA referral lawyer.

11 14. Several consumers believe that CLA USA, Inc. agents, including but not limited
12 to Johnson, misrepresented or failed to adequately explain and disclose material terms related to
13 the annuities, including surrender periods and penalties, rider charges, rates of return, interest
14 rate caps, which in some instances depleted consumers' investment gains or resulted in
15 investment losses.

16 15. Several consumers also describe CLA USA, Inc. agents, including but not limited
17 to Johnson, giving investment advice and convincing them to sell or transfer securities in order
18 to purchase annuities that CLA USA, Inc. agents were marketing, even though none of CLA
19 USA's agents were registered with Department of Financial Institutions as qualified to give
20 investment advice related to securities. Johnson also misrepresented his credentials and claimed
21 to be a Registered Investment Advisor, broker, and Certified Financial Planner when he was not.

22 16. Several consumers declared that their applications for annuities were falsified
23 without their knowledge to contain assets they do not possess.

24 17. Neil Granger, an insurance agent with 34 years experience in insurance sales and
25 10 years of experience in elder financial abuse, reviewed several Washington consumer
26 declarations, declarations of former CLA agents, and multiple documents and opined that CLA

1 operates a classic “trust mill” scheme designed to market unnecessary or expensive products to
2 seniors using misrepresentation and pretext. In his view, CLA’s marketing of its Lifetime Estate
3 Plan is simply a pretext for CLA USA, Inc. agents to question consumers about their assets and
4 convince them to invest those assets in CLA USA, Inc.’s annuities and insurance products.

5 II. CONCLUSIONS OF LAW

6 1. This Court has jurisdiction over the persons and subject matter at issue in this
7 case.

8 2. King County is the appropriate venue for this action.

9 3. The State of Washington has the right to bring an action to restrain unfair and
10 deceptive acts or practices. RCW 19.86.080(1).

11 4. Washington’s Estate Distribution Documents Act, RCW 19.295, makes it
12 unlawful to use “living trusts” as a marketing tool to by non-lawyers to generate sales leads.

13 5. RCW 19.295.010(4) provides that “[m]arket or ‘marketing’ includes every offer,
14 contract, or agreement to prepare or gather information for the preparation of, or to provide,
15 individualized advice about an estate distribution document.” “Gathering information” means
16 “collecting data, facts, figures, records and other particulars about a specific person or persons
17 for the preparation of an estate distribution document.” RCW 19.295.010(3).

18 6. RCW 19.295.005 expressly prohibits persons not licensed to practice law from
19 the “unscrupulous practice of marketing legal documents as a means of targeting senior citizens
20 for financial exploitation.” Violations of the Estate Distribution Documents Act are per se
21 violations of Washington’s Consumer Protection Act (CPA), RCW 19.86. RCW 19.295.030.

22 7. This Court has the authority to restrain Defendants from engaging in unfair or
23 deceptive acts pursuant to RCW 19.86.080 and CR 65.

24 8. Defendants are engaged in trade or commerce within the meaning of RCW
25 19.86.020.

1 9. Washington consumers have a clear legal and equitable right to be free of unfair
2 or deceptive acts or practices. RCW 19.86.

3 10. Based on the declarations and exhibits presented, the State of Washington has a
4 well-grounded fear of immediate invasion of consumers' legal rights.

5 11. It appears from the evidence presented that Defendants, CLA Estate Services,
6 Inc. violated the CPA, RCW 19.86.020, by: Materially misrepresenting Washington's probate
7 law in written materials and in verbal representations during estate planning seminars and in
8 one-on-one meetings, in a manner that has the capacity to deceive consumers into believing that
9 probate necessarily takes longer, costs more, is more vulnerable to challenge, and reduces assets
10 available to heirs compared to revocable living trusts, and conversely that revocable living trusts
11 necessarily and universally protect assets, can be administered immediately, with less cost, more
12 control, and are invulnerable to challenge.

13 12. It appears from the evidence presented that Defendants CLA Estate Services, Inc.
14 and CLA USA, Inc. violated Washington's Estate Distribution Documents Act, RCW 19.295,
15 by:

16 a) Marketing estate distribution documents by providing individualized advice
17 about estate distribution documents and/or by gathering information about consumers for the
18 preparation of or modification of estate distribution documents without being authorized to
19 practice law in Washington and without being employed by someone authorized to practice law
20 in Washington; and

21 b) Marketing estate distribution documents as a means of generating sales leads for
22 annuities and other insurance products.

23 13. It appears from the evidence presented that Defendant CLA USA, Inc. violated
24 the CPA, RCW 19.86.020, by:

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26 ///

1 a) Misrepresenting or failing to disclose material terms of annuities during the
2 marketing of annuities, including surrender periods, surrender penalties, income riders, and other
3 terms;

4 b) Providing investment advice without being registered by Department of Financial
5 Institutions as authorized to give such advice; and

6 c) Falsifying annuity applications of Washington consumers.

7 14. It appears from the evidence presented that Defendant Mitchell Reed Johnson
8 violated the CPA, RCW 19.86.020, by:

9 a) Misrepresenting or failing to disclose material terms of annuities during the
10 marketing of annuities related to surrender periods, surrender penalties, income riders, and other
11 terms;

12 b) Misrepresenting his credentials, and providing investment advice without being
13 registered by Department of Financial Institutions to give such advice; and

14 c) Falsifying annuity applications of Washington consumers.

15 15. It appears from the evidence presented that Washington consumers have suffered
16 and will continue to suffer real and potentially irreparable harm if these acts and practices by
17 Defendants CLA Estate Services, Inc., CLA USA, Inc., and Mitchell Johnson are not enjoined.

18 16. The public interests at stake and potential harm to consumers weigh heavily in
19 favor of granting a preliminary injunction to stop the above referenced practices.

20 **III. ORDER**

21 It is therefore ORDERED that the State of Washington's Motion for Preliminary
22 Injunction is GRANTED.

23 IT IS FURTHER ORDERED that pending trial in this matter, Defendants CLA Estate
24 Services, Inc. and CLA USA, Inc. and their officers, agents, representatives, employees,
25 attorneys, and other persons in active concert of participation with them are hereby
26 RESTRAINED and ENJOINED from the following:

1 (a) Engaging in the following practices without being authorized to practice law or
2 without a statutory exemption:

- 3 i) Conducting estate planning seminars in Washington;
- 4 ii) Marketing estate distribution documents, as defined by RCW 19.295.010 in
5 Washington;
- 6 iii) Advising Washington consumers regarding their legal rights or obligations
7 under a will, a trust, or an estate distribution document as defined by
8 RCW 19.295.010;
- 9 iv) Advising Washington consumers regarding the qualities, attributes or
10 deficiencies of a will, a trust, or other estate distribution document as defined
11 by RCW 19.295.010;
- 12 v) Gathering or offering to gather data, facts, figures, records, and other
13 particulars about Washington consumers for the preparation of an estate
14 distribution document;
- 15 vi) Obtaining financial and estate information from any Washington consumer
16 under the pretext of informing that consumer about wills, trusts, or estate
17 distribution documents as defined by RCW 19.295.010, or using such
18 information for developing and generating leads to market annuities,
19 insurance, and/or other financial products to consumers;
- 20 vii) Making, directly or by implication, any material misrepresentations or
21 omissions about Washington probate or trust law to consumers in
22 Washington, including but not limited to: misrepresenting the cost of probate
23 as a percentage of the size or value of the estate, misrepresenting that
24 appraisal fees, creditor fees, taxes, and other such costs are necessarily less
25 through revocable living trusts; misrepresenting the time needed to settle
26 probate as necessarily longer than would be required through other estate

1 planning options such as revocable living trusts; misrepresenting probate as
2 necessarily public, more vulnerable to being contested, or more emotionally
3 or financially difficult than other estate planning options such as revocable
4 living trusts; and misrepresenting probate as necessarily stripping individuals
5 or families of control over estate assets in ways that would be preserved
6 through other estate planning options such as revocable living trusts; and
7 misrepresenting that revocable living trusts avoid guardianship;

8 viii) Using testimonials from “experts” as to the purported value of one estate
9 distribution document over another, where those “experts” are not specifically
10 referencing Washington estate planning and trust or probate processes;

11 (b) Utilizing meetings with Washington consumers who have purchased CLA’s Lifetime
12 Estate Plan to market annuities or other insurance products;

13 (c) Misrepresenting or holding oneself out, to any Washington consumer, as an Investment
14 Advisor or otherwise qualified to advise Washington consumers whether to sell or transfer
15 securities, or to provide investment advice about securities, without being properly registered
16 with Washington’s Department of Financial Institutions;

17 (d) Misrepresenting, directly or by implication or omission, to any Washington consumer
18 any material term of an annuity sale, including but not limited to surrender periods, surrender
19 penalties, income rider fees, interest rates, bonuses, caps and commissions that will be paid on
20 the sale of annuities and other insurance products.

21 (e) Falsifying, or not taking reasonable steps to ensure the accuracy of annuity applications
22 of any Washington consumer submitted by any employee, independent contractor, or agent of
23 CLA on the consumer’s behalf of Washington consumers.

24 IT IS FURTHER ORDERED that, pending trial in this matter, Defendant Mitchell Reed
25 Johnson is hereby RESTRAINED and ENJOINED from the following:
26

1 (a) Marketing annuities or any insurance product to any Washington consumer who
2 purchased a Lifetime Estate Plan from CLA Estate Services, Inc. or CLA USA, Inc.

3 (b) Misrepresenting or holding himself out as an Investment Advisor or similar title
4 as qualified to advise Washington consumers whether to sell or transfer securities, or to provide
5 investment advice about securities, without being properly registered with Washington's
6 Department of Financial Institutions;

7 (c) Misrepresenting, directly or by implication or omission, any material term of an
8 annuity or insurance product sale to any Washington consumer, including but not limited to,
9 surrender periods, surrender penalties, income rider fees, interest rates, bonuses, caps, and
10 commissions that will be paid on the sale of annuities or other insurance products.

11 (d) Falsifying any annuity or insurance product application on behalf of any
12 Washington consumer.

13 DATED this 24th day of August, 2018.

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15 
16 JUDGE MICHAEL SCOTT

17 Presented by:

18 ROBERT W. FERGUSON
19 Attorney General

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21 TRISHA L. MCARDLE, WSBA #16371
22 Senior Counsel
23 CYNTHIA L. ALEXANDER, WSBA #46019
24 Assistant Attorney General
25 Attorneys for Plaintiff State of Washington
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