

FILED
KING COUNTY, WASHINGTON
JUL 16 2015
DEPARTMENT OF
JUDICIAL ADMINISTRATION

EXP07

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
Plaintiff,

v.

EMERALD CAPITAL
PRESERVATION, INC.
Defendant.

NO. 15-2-16823-1 SEA

CONSENT DECREE

[CLERK'S ACTION REQUIRED]

I. JUDGMENT SUMMARY

- | | | |
|-----|---------------------------------|---|
| 1.1 | Judgment Creditor: | State of Washington |
| 1.2 | Judgment Debtors: | EMERALD CAPITAL PRESERVATION; |
| 1.3 | Principal Judgment Amount: | |
| | a. Civil Penalty: | \$17,500 with \$17,500 suspended (conditioned on compliance with the terms of the Consent Decree) |
| | b. Restitution | None. Paid in Full. |
| 1.4 | Costs & Attorney's Fees: | None. Paid in Full. |
| 1.5 | Total Judgment: | \$17,500 in civil penalties, suspended, however) |
| 1.6 | Post Judgment Interest Rate: | 12% per annum suspended. |
| 1.7 | Attorney for Judgment Creditor: | John A. Nelson, Assistant Attorney General |
| 1.8 | Attorney for Judgment Debtors: | Larry Setchell, Helsell Fetterman, LLP. |

1 Plaintiff, State of Washington, having commenced this action pursuant to the Consumer
2 Protection Act, RCW 19.86, The Pension Poacher Prevention Act, RCW 19.335, and The Estate
3 Distribution Document Act, RCW 19.295. Defendant, Emerald Capital Preservation, Inc., a
4 Washington corporation, having waived service with a Summons and Complaint in this matter;
5 and Plaintiff appearing by and through its attorneys, Robert W. Ferguson, Attorney General, and
6 John A. Nelson, Assistant Attorney General, and Defendant appearing by and through its attorney,
7 Larry Setchell, Helsell Fetterman, LLP.

8 Plaintiff and Defendant having agreed on a basis for the settlement of the matters alleged
9 in the Complaint, and to the entry of this Consent Decree against Defendant without the need for
10 trial or adjudication of any issue of law or fact; and

11 Plaintiff and Defendant acknowledge that each party has agreed to the entry of this
12 Consent Decree solely for the purposes of settlement. Nothing contained in this Consent Decree
13 shall constitute an admission by Defendant of any violation of any state or federal law, rule or
14 regulation. Nothing in this paragraph shall limit the Attorney General from relying on this
15 Consent Decree for the purpose of enforcing it against Defendant; and

16 Defendant recognizes and states that this Consent Decree is entered into voluntarily and
17 that no promises or threats have been made by the Attorney General's Office or any member,
18 officer, agent or representative thereof to induce it to enter into this Consent Decree, except as
19 provided herein; and

20 Defendant waives any right it may have to appeal from this Consent Decree; and

21 Defendant further agrees that it will not oppose the entry of this Consent Decree on the
22 grounds the Consent Decree fails to comply with Rule 65(d) of the Rules of Civil Procedure, and
23 hereby waives any objections based thereon; and

24 Defendant further agrees that this Court shall retain jurisdiction of this action for the
25 purpose of implementing and enforcing the terms and conditions of the Consent Decree and for
26 all other purposes; and

1 The Court finding no just reason for delay;
2 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED as
3 follows:

4 II. DEFINITIONS

5 2.1 "Estate Distribution Document" shall mean any one or more of the following
6 documents, instruments, or writings prepared, or intended to be prepared, for a specific person or
7 as marketing materials for distribution to any person: a last will and testament or any writing,
8 however designated, that is intended to have the same legal effect as a last will and testament,
9 and any codicil thereto; revocable and irrevocable inter vivos trusts and any instrument which
10 purports to transfer any of the trustor's current and/or future interest in real or personal property
11 thereto; or, any agreement that fixes the terms and provisions of the sale of a decedent's interest
12 in any real or personal property at or following the date of the decedent's death.

13 2.2 "Veteran" means any person who served in the active military, naval, or air
14 service, and who was discharged or released therefrom under conditions other than dishonorable,
15 as defined in 38 U.S.C. §101(2).

16 2.3 "Aid and Attendance" means the pension benefit administered by the United
17 States Department of Veterans Affairs as defined in 38 U.S.C. §1521.

18 2.4 "VA accredited attorney" means an attorney who is authorized to assist in the
19 preparation, presentation, and prosecution of claims for VA benefits, as authorized by 38 U.S.C.
20 §5904.

21 2.5 "VA accredited claims agent" means an agent who is authorized to assist in the
22 preparation, presentation, and prosecution of claims for VA benefits, as authorized by 38 U.S.C.
23 §5904.

24 III. GENERAL

25 3.1 Jurisdiction. This Court has jurisdiction over the subject matter of this action and
26 over the parties. The Plaintiff's Complaint in this matter states claims upon which relief may be

1 granted under the provisions of the Consumer Protection Act, RCW 19.86, The Pension Poacher
2 Prevention Act, RCW 19.335, and The Estate Distribution Document Act, RCW 19.295.

3 3.2 Defendant. For purposes of this Consent Decree the term "Defendant" where not
4 otherwise specified shall mean Emerald Capital Preservation, Inc., a Washington corporation
5 registered in the State of Washington, that is owned and operated by Donald R. Smith.

6 IV. INJUNCTIONS

7 4.1 Application of Injunctions. The injunctive provisions of this Consent Decree shall
8 apply to the Defendant, and Defendant's successors, assigns, transferees, members, partners,
9 officers, agents, servants, employees, representatives and affiliates.

10 4.2 Notice. Within seven (7) days following the entry of this Consent Decree,
11 Defendant shall inform all members, managers and employees, including those employees with
12 supervising responsibilities, of the terms and conditions of this Consent Decree.

13 4.3 Injunctions. For a two (2) year period beginning on the date that this Consent
14 Decree is entered by the Court, Defendant is hereby enjoined and restrained from directly or
15 indirectly engaging in the following acts or practices in the State of Washington:

16 a. Referring Washington Veterans to Alliant Elder Initiative, Inc., Elder
17 Honor d/b/a Care Patrol, Paul Miller, Matt Miller, Anna Trampe, Matt Jones, Gerald Sprute,
18 Mark Albertson, and/or Sandra Messer for assistance related to VA benefits, including but not
19 limited to Aid and Attendance.

20 b. Referring Veterans to any VA Accredited Attorney or Claims agent
21 whose place of business is located outside the State of Washington.

22 c. Advising Veterans on any benefits administered by the United States
23 Department of Veterans Affairs, including but not limited to Aid and Attendance, except to
24 inform Veterans that such benefits may be available and that they should seek the advice of a
25 VA accredited claims agent or attorney.

26 d. Making the following misrepresentations directly or by implication:

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- i) That the Defendant is qualified and authorized to advise consumers on the substantive content of estate distribution documents and/or to market estate distribution documents.
- ii) That the Defendant is qualified and authorized to advise consumers on the substantive content and of effect of reverse mortgages if he/she is not registered with the Washington State Department of Financial Institutions as a mortgage loan originator or broker.
- iii) Providing information regarding the legal aspects of probate of an individual's estate in Washington unless the Defendant is an attorney licensed to practice law in the State of Washington. However, it shall not be a violation of this provision for Defendant to advise clients regarding beneficiary designations, payment on death arrangements, joint tenancies in financial accounts, and other such "pay on death" arrangements included as part of the financial planning process.

e. Engaging in the following practices without being authorized to practice law or without a statutory exemption:

- i) Soliciting persons, or receiving compensation directly or indirectly, for services related to marketing estate distribution documents, including but not limited to wills or trusts, as defined by RCW 19.295.010;
- ii) Agreeing to prepare or gather the information necessary for the creation of a will, a trust, or an estate distribution document as defined by RCW 19.295.010. However, it shall not be a violation of this provision for Defendant to obtain financial information from

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clients for the purpose of creating a financial plan and determining whether to refer clients to an attorney for further discussion regarding estate planning.

- iii) Advising a person regarding his or her legal rights or obligations under a will, a trust, or an estate distribution document as defined by RCW 19.295.010;
 - iv) Advising a person regarding the qualities, attributes or deficiencies of a will, a trust, or an estate distribution document as defined by RCW 19.295.010; and
 - v) Selecting, modifying or completing a will, a trust, or an estate distribution document as defined by RCW 19.295.010.
- f. Discussing with consumers any information about estate planning other than that which is required to properly assess a consumer's financial plan. It shall not be a violation of this provision for Defendant to inquire as to the extent of a client's existing estate planning documentation (e.g., whether or not he/she has a will, life insurance, or other estate planning tools) for the purpose of crafting an appropriate financial plan.
- g. Engaging in any business relationship with a Washington-licensed attorney that involves a potential conflict of interest, without notifying all potential consumers of the existence of a potential conflict of interest in writing and obtaining a written waiver of the conflict by the consumer.
- h. Failing to disclose to consumers any fee splitting arrangement between Defendant and any Washington-licensed attorney.
- i. Charging unreasonable fees for basic services such as document notarization or document review.
- j. Conducting any presentation, seminar, workshop, or other public

1 gathering regarding estate planning or VA benefits. Such restriction does
2 not limit Defendant's ability to conduct presentations related solely to
3 financial planning services, or to notify consumers of the mere existence
4 of VA and other government benefits for which they may be eligible.

5 4.4 Notwithstanding the limitations contained in Paragraph 4.3, Defendant is
6 *permanently* enjoined from advertising or promoting an event, presentation, seminar,
7 workshop, or other public gathering regarding veterans' benefits that does not include the
8 following disclosure: "This event is not sponsored by, or affiliated with, the United States
9 Department of Veterans Affairs, the Washington State Department of Veterans Affairs, or any
10 other congressionally chartered or recognized organization of honorably discharged members
11 of the Armed Forces of the United States or any of their auxiliaries. Products or services that
12 may be discussed at this event are not necessarily endorsed by those organizations. You may
13 qualify for benefits other than or in addition to the benefits discussed at this event."

14 V. RESTITUTION

15 5.1 Pursuant to RCW 19.86.080, Defendant agrees to pay restitution to consumers.
16 Specifically, Defendant shall pay to Washington \$26,564 (the "Fund") for distribution to veteran
17 consumers who purchased power of attorney and/or living trust services without advance
18 disclosure by Defendant that it would be paid a fee for those services by an estate planning
19 attorney. The apportionment of the Fund among the affected veteran consumers shall be solely
20 within the Attorney General's discretion. However, individual payments generally will range
21 from \$124 to \$1000, depending on the services purchased by a veteran consumer. Defendant
22 shall fully cooperate with Washington in Washington's distribution of payments to these veteran
23 consumers, including providing to Washington a list of these consumers and their last known
24 addresses and other available contact information. Any nonpublic information provided to
25 Washington by Defendant shall be deemed "Confidential Information" subject to Section 8.4
26 below. In the event that a Veteran cannot be located, is deceased, or otherwise relinquishes his/her

1 claim, his/her portion of restitution shall be retained by the Attorney General's Office to be used
2 for Veteran education and outreach programs, or any other lawful purpose.

3 5.2 Payment under this provision shall be paid to the State of Washington as prior to
4 entry of this Consent Decree.

5 **VI. ATTORNEY'S COSTS & FEES**

6 6.1 Pursuant to RCW 19.86.080, Defendant shall pay the costs and reasonable attorney's
7 fees incurred by the Plaintiff in pursuing this matter in the amount of \$ 17,500. In no event shall any
8 portion of this payment be characterized as the payment of a fine, civil penalty or forfeiture by
9 Defendant.

10 6.2 Payment under this provision shall be paid to the State of Washington as referenced
11 prior to entry of this Consent Decree.

12 6.3 In any successful action to enforce any part of this Consent Decree, Defendant will
13 pay the Attorney General its reasonable attorney's fees and costs, including reasonable attorney's
14 fees as provided by RCW 19.86.080.

15 **VII. CIVIL PENALTY**

16 7.1 Pursuant to RCW 19.86.140, a civil penalty of \$17,500 shall be imposed against
17 Defendant. However, \$17,500 of this civil penalty shall be suspended upon Defendant's compliance
18 with the terms of this Consent Decree.

19 7.2 In the event that the Court finds that Defendant is in material breach of any
20 provision of this Consent Decree, the suspended civil penalties referenced shall automatically
21 be unsuspended and assessed against Defendant, provided, however, that in such event,
22 Washington shall not be precluded from seeking other relief in accord with law and appropriate
23 to remedy and such violation.
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VIII. ENFORCEMENT

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2 8.1 Violation of any of the injunctions contained in this Consent Decree, as determined
3 by the Court, shall subject the Defendants to a civil penalty of not more than \$25,000 per violation
4 pursuant to RCW 19.86.140.

5 8.2 Violation of any of the terms of this Consent Decree, as determined by the Court,
6 shall constitute a violation of the Consumer Protection Act, RCW 19.86.020.

7 8.3 This Consent Decree is entered pursuant to RCW 19.86.080. Jurisdiction is retained
8 for the purpose of enabling any party to this Consent Decree with or without the prior consent of the
9 other party to apply to the Court at any time for enforcement of compliance with this Consent Decree,
10 to punish violations thereof, or to modify or clarify this Consent Decree.

11 8.4 Representatives of the Office of the Attorney General shall be permitted, upon
12 advance written notice of twenty days to Defendant, to access, inspect and/or copy business records
13 or documents in possession, custody or under control of Defendant concerning services rendered by
14 Defendant to Washington Veterans to monitor compliance with this Consent Decree, provided that
15 the inspection and copying shall avoid unreasonable disruption of Defendant's business activities.
16 Washington shall not disclose any information described in this Paragraph 8.4 ("Confidential
17 Information") unless such disclosure is required by law. In the event that a representative of the
18 Office of the Attorney General receives a request under the Public Records Act, subpoena, or other
19 demand for production that seeks the disclosure of Confidential Information, the Office of the
20 Attorney General shall notify Defendant as soon as practicable and in no event more than ten (10)
21 calendar days after receiving such request and shall allow Defendant a reasonable time, not less than
22 ten (10) calendar days, from the receipt of such notice to seek a protective order relating to the
23 Confidential Information or to otherwise resolve any disputes relating to the production of the
24 Confidential Information before Washington discloses any Confidential Information. Nothing in
25 this Consent Decree shall affect State of Washington's compliance with the Public Records Act,
26 RCW 42.56.

1 8.5 To monitor compliance with this Consent Decree, the Office of the Attorney General
2 shall be permitted to serve interrogatories pursuant to the provisions of CR 26 and CR 33 and to
3 question Defendant or any officer, director, agent, or employee of Defendant by deposition pursuant
4 to the provisions of CR 26 and CR 30 provided that the Office of the Attorney General attempts in
5 good faith to schedule the deposition at a time convenient for the deponent and his or her legal
6 counsel.

7 8.6 This Consent Decree in no way limits the Office of the Attorney General, or any
8 other state agency, from conducting any lawful non-public investigation to monitor Defendant's
9 compliance with this Consent Decree or to investigate other alleged violations of the CPA, which
10 may include but is not limited to interviewing customers or former employees of Defendant.

11 8.7 Nothing in this Consent Decree shall be construed as to limit or bar any other
12 governmental entity or consumer from pursuing other available remedies against Defendant.

13 8.8 Under no circumstances shall this Consent Decree or the name of the State of
14 Washington, the Office of the Attorney General, Consumer Protection Division, or any of their
15 employees or representatives be used by Defendant in connection with any selling, advertising, or
16 promotion of products or services, or as an endorsement or approval of Defendant's acts, practices
17 or conduct of business.

18 8.9 This Consent Decree shall be binding upon and inure to the benefit of Defendant's
19 successors and assigns. Defendant and its successors and assigns shall notify the Attorney General's
20 Office at least thirty (30) days prior to any change-in-control of Defendant that would change the
21 identity of the corporate entity responsible for compliance obligations arising under this Consent
22 Decree, including but not limited to dissolution, assignment, sale, merger, or other action that would
23 result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent,
24 or affiliate that engages in any acts or practices subject to this order; the proposed filing of a
25 bankruptcy petition; or a change in the corporate name or address. Provided, however, that with
26 respect to any proposed change in the corporation about which Defendant and its successors and

1 assigns learn less than thirty (30) days prior to the date such action is to take place, Defendant and
2 its successors and assigns shall notify the Attorney General's Office as soon as is practicable after
3 obtaining such knowledge.

4 8.10 Any notice or other communication required or permitted under this Consent Decree
5 shall be in writing and delivered to the following persons or any person subsequently designated by
6 the parties:

7 For Emerald Capital Preservation:
8 Emerald Capital Preservation, Inc.
9 Attn: Donald R. Smith
10 2526 B 143rd SW
11 Lynwood, WA 98087

12 And

13 Helsell Fetterman, LLP
14 Attn: Larry Setchell
15 1001 Fourth Avenue, Suite 4200
16 Seattle, WA 98154

17 For the State of Washington:
18 John A. Nelson,
19 Assistant Attorney General
20 Consumer Protection Division
21 800 Fifth Avenue, Suite 2000
22 Seattle, WA 98104-3188

23 8.11 The Clerk of the Court is ordered to enter the foregoing Judgment and Consent
24 Decree immediately.

25 IX. TERMINATION

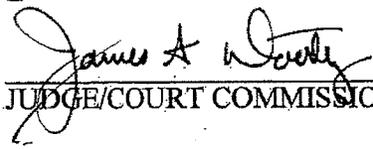
26 9.1 Unless otherwise stated, the injunctive provisions of Section IV and all obligations
of Defendant hereunder shall terminate two (2) years from the date of entry of the foregoing
Judgment and Consent Decree. Termination shall not relieve Defendant of its obligation to
comply with all applicable laws, including Washington's Pension Poacher Prevention Act, Estate
Distribution Document Act, and the Consumer Protection Act.

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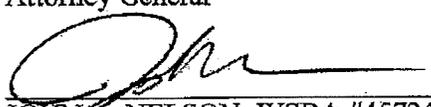
DONE IN OPEN COURT this 16 day July, 2015.


JUDGE/COURT COMMISSIONER

Approved for entry and presented by:

Approved for Entry, Notice of Presentation
Waived:

ROBERT W. FERGUSON
Attorney General


JOHN A. NELSON, WSBA #45724
Assistant Attorney General
State of Washington
Attorneys for Plaintiff


LARRY SETCHELL, HELSELL
FETTERMAN, LLP, WSBA #4659
Attorney for Defendant


EMERALD CAPITAL PRESERVATION,
INC.
Defendant
By:
Title: President