

COPY

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

RECEIVED

RECEIVED
ADMINISTRATIVE ROOM

2007 JUN 21 PM 4:25

KING COUNTY
SUPERIOR COURT

The Honorable Joan DuBuque

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

NO. 07-2-08789-3 SEA

Plaintiff,

**FIRST AMENDED COMPLAINT FOR
INJUNCTIVE AND ADDITIONAL
RELIEF UNDER THE UNFAIR
BUSINESS PRACTICES--CONSUMER
PROTECTION ACT, CHAPTER 19.86
RCW**

v.

FISCAL DYNAMICS, INC., DOVE
REALTY, INC., NORTHWEST ASSETS,
INC., Washington for -profit corporations;
CUMULATIVE LLC, a Washington limited
liability company; JOSEPH M. KAISER, as
an officer of Fiscal Dynamics and
Cumulative LLC and in his individual
capacity; WALTER D. SCAMEHORN as an
officer of Fiscal Dynamics, Cumulative
LLC, and President of Dove Realty, Inc.,
and in his individual capacity; E. ARLISS
MORGAN, as President of Northwest
Assets, Inc., and in his individual capacity;
TINA M. WORTHEY, in her individual
capacity; and Heidi M. Kaiser, Sandra J.
Scamehorn, and Jane Doe Morgan as
members of a marital community with other
named Defendants,

Defendants.

COMES NOW Plaintiff, State of Washington, Office of the Attorney General,
Consumer Protection Division, by and through its attorneys, Robert M. McKenna, Attorney

1 General, David Huey, Assistant Attorney General, and Jack G. Zurlini, Jr., Assistant Attorney
2 General, and brings this action against the defendant named herein, alleging as follows:

3 **I. JURISDICTION AND VENUE**

4 1.1. This Complaint is filed and these proceedings are instituted under the provisions
5 of chapter 19.86 RCW, the Unfair Business Practices -- Consumer Protection Act.
6

7 1.2. The violations hereinafter alleged have been committed in whole or in part
8 within King County and elsewhere within the State of Washington by the Defendant named
9 herein.

10 1.3. Standing of the Attorney General's Office to commence this action is conferred
11 by RCW 19.86.080.

12 1.4. Jurisdiction over the Defendant is vested in this court because Defendant has
13 committed the acts alleged below in the state of Washington. Jurisdiction over the subject
14 matter of this complaint is conferred by the above-referenced statute.
15

16 **II. DEFENDANTS**

17 2.1. Defendant JOSEPH KAISER is an adult male resident of the State of
18 Washington. Defendant created Fiscal Dynamics, Inc., a for-profit Washington corporation.
19 Defendant also formed and operated through Cumulative, LLC. Defendant Kaiser also acted
20 through and benefited from the activities of Northwest Properties, Inc., a for-profit Washington
21 corporation that was set up by former Defendants Tina M. Worthy and E. Arliss Morgan.
22

23 2.2. Defendant Kaiser, along with former Defendant Walter Scamehorn, directed,
24 controlled, formulated and carried out the acts, practices and activities that are the subject of
25 this Complaint. Defendant Joseph Kaiser is married to Heidi M. Kaiser and all acts done by
26

1 KAISER were done on behalf of their marital community. KAISER resides in Pierce County,
2 Washington.

3 **III. NATURE OF TRADE OR COMMERCE**

4 **3.1.** Defendant, during the time period relevant to this action, engaged in the for-
5 profit business of real estate investing. Defendant uses unfair or deceptive acts and practices in
6 at least two real estate investment tactics: the sale/buyback scheme and the tax overage
7 scheme. Pursuant to the sale/buyback scheme, Defendant obtains ownership of homes with
8 large amounts of equity without paying any cash or only nominal amounts to the property
9 owner. Pursuant to the tax overage scheme, Defendant captures the excess proceeds of tax
10 sales that otherwise would be paid to property owners. As such, Defendant is engaged in trade
11 or commerce within the meaning of RCW 19.86.020.
12

13 **IV. BACKGROUND FACTS**

14 **4.1.** Defendant is a sophisticated, knowledgeable real estate investor, with twenty
15 years experience in the business of obtaining distressed properties. Defendant has written
16 many books and conducts seminars where he teaches his methods for earning large amounts of
17 money quickly through real estate investment. After being a party to roughly fifty lawsuits
18 Defendant Kaiser also wrote a book containing tactics and model legal documents designed to
19 protect investors when being sued for using his investment methods.
20

21 **4.2.** Defendant's real estate investment schemes involve targeting property owners
22 under severe financial duress and gaining their confidence. His victims generally lack
23 adequate financial knowledge, skills, expertise and experience necessary to identify and
24 evaluate effectively their available alternatives or to otherwise fully appreciate the one-sided
25
26

1 control over the property. All that the former property owner is left with is a tenuous right to
2 buy back his home or receive some proceeds if he can comply with the onerous obligations
3 imposed by the many complex documents Defendant had him execute as part of the scheme.

4 4.6. The complex documents that Defendant has property owners sign include a land
5 trust agreement, warranty deed, assignment of beneficial interest (used by the Defendant to
6 unlawfully avoid real property excise taxes), power-of-attorney, earnest money receipt and
7 sales agreement, assignment of insurance proceeds, and additional agreements and
8 acknowledgements. These documents, taken collectively, take away all of the property
9 owner's rights to the property and impose onerous obligations. At the same time, they impose
10 no obligation upon the Defendant or his companies, and Defendant pays no or nominal
11 consideration to the former property owner.
12

13 4.7. As part of the sale/buyback scheme, Defendant induces the property owner to
14 deed his home in fee simple to Fiscal Dynamics or other entity controlled by Defendant
15 (hereinafter Fiscal Dynamics) as trustee. According to the documentation Defendant has the
16 property owner sign, the property owner becomes the beneficiary of the landowning trust but
17 loses all legal and equitable rights to the property. The documents provide the former property
18 owner, now beneficiary, with only the right to undefined proceeds if the property is sold.
19

20 4.8. At the same time Defendant creates this trust, Defendant has the property owner
21 also sign an assignment of partial beneficial interest that makes Fiscal Dynamics an additional
22 beneficiary of the trust. The trust gives Fiscal Dynamics, as a beneficiary, veto power over any
23 decision regarding the operation of the trust or disposition of its corpus – the home. The trust
24 also gives Fiscal Dynamics, as the trustee, plenary powers over disposition of the home.
25
26

1 Defendant also has the property owner sign yet another document at this time, an agreement
2 that requires the property be listed for sale within twelve months at an undisclosed amount and
3 requires the former property owner to pay rent in an undisclosed amount. Although the
4 agreement purports to allow the property owner to buy the house back, the trust agreement and
5 beneficial assignment insure that Defendant retains complete control over the rental amount,
6 sales price of the house, terms of sale, and acceptance of bids, making any buyback completely
7 subject to the will of the Defendant.
8

9 4.9. Also, according to the documents Defendant has the property owner sign, if the
10 former property owner is as little as five days late with the undefined rental payments, or
11 breaches any other terms of the agreement, he loses all rights and interests in the property: he
12 does not receive any proceeds of a sale, he loses his purported right to buy the house back, and
13 he must immediately vacate the property.
14

15 4.10. In the process of taking ownership through the trust, Defendant unlawfully
16 avoids the payment of excise property taxes. Defendant unlawfully avoids payment of taxes
17 by misrepresenting the true nature of the trust transactions. Defendant misrepresents the
18 transactions by filing an affidavit of exemption from excise taxes and falsely claiming that the
19 property is merely placed in a revocable trust with no change in beneficial interest, *i.e.* that the
20 original property owner remains the only person with a beneficial interest in the property.
21 Defendant conceals the fact that he requires the property owner to simultaneously assign a
22 beneficial interest in the trust to his company, resulting in a property interest being transferred
23 to Defendant, which transfer must be taxed. Defendant creates and swears to this affidavit on
24 behalf of, but without the knowledge of, the property owner/grantor. Because the property
25
26

1 owner, as the grantor, is ultimately responsible for the accuracy of the affidavit as well as the
2 payment of excise taxes, RCW 82.45.080, Defendant exposes the property owner to both civil
3 and criminal penalties.

4 TAX OVERAGE SCHEME

5
6 4.11. Pursuant to his tax overage scheme, Defendant captures the excess proceeds of
7 tax sales that otherwise would be paid to property owners, referred to as "tax overage."
8 Pursuant to the scheme, Defendant falsely promises property owners he will save their home or
9 land before it is auctioned at a tax foreclosure sale. Based on Defendant's false promise and
10 other unfair or deceptive acts, Defendant then obtains title to the home or land for no or
11 nominal consideration. And once Defendant obtains title, he then lets the tax sale go through
12 so that he is paid the substantial excess proceeds from the auction, thus stripping the equity to
13 which the property owner is normally entitled. Defendant's scheme is unfair because, among
14 other reasons, it violates the law and public policy contained within RCW 84.64.080. This
15 statute is meant to insure that any excess money from a foreclosure auction be paid to
16 whomever is owner at the time of issuance of a certificate of delinquency, rather than to those
17 like Defendant who are somehow able to gain ownership after the foreclosure process
18 commences.
19

20
21 4.12. Defendant locates victims of his tax overage scheme by, among other means,
22 unlawfully obtaining lists of tax delinquent properties, the identities of their owners, and
23 county title searches from county officials. Defendant obtains the lists by filing Public
24 Disclosure Requests pursuant to RCW 42.56.001, *et seq.* This statute prohibits agencies from
25 providing lists to people for commercial purposes. RCW 42.56.070(9). Therefore agencies
26

1 require persons requesting lists of individuals under the statute to affirm under oath that they
2 are not doing so for any commercial purpose or profit seeking activity. When Defendant files
3 his Public Disclosure Requests he falsely affirms under oath that he does not seek the
4 information for any commercial purpose or profit seeking activity. As a result, Defendant
5 unfairly and deceptively obtains the identities of consumers facing tax foreclosure.
6

7 **4.13.** After Defendant illegally obtains the identities of property owners facing tax
8 foreclosure he furthers his scheme by sending them solicitations offering to protect the
9 property owner from other investors who want to “steal” their home. Defendant also offers to
10 buy the home or stop the foreclosure. Defendant’s solicitations are misleading because they do
11 not fairly disclose the material terms of his investment scheme. Contrary to merely an offer to
12 purchase real estate, or stop the sale, Defendant’s scheme is designed for Defendant to take full
13 ownership and control of the property so that they can allow the foreclosure sale to occur and
14 then collect the substantial excess proceeds from the foreclosure auction. Defendant and his
15 agents misrepresent to property owners during meetings and telephone conversations, that they
16 will receive nothing if the home or land goes to foreclosure, thus making the property owner’s
17 situation appear financially worthless. In reality, property owners are entitled to whatever
18 proceeds remain after the taxes and fees are paid – amounts that can be in the tens of thousands
19 of dollars—with no intervention by Defendant.
20
21

22 **4.14.** Also in furtherance of his tax overage scheme, Defendant and his agents fail to
23 disclose material information to the property owner including, but not limited to, the property
24 owner being entitled to any proceeds after the sale, and that some owners could avoid
25 foreclosure through tax deferral programs for the elderly. Instead, Defendant and his agents
26

1 their behalf, and (c) making his closely-held corporation trustee on land trusts with the
2 property owners as beneficiaries.

3 **4.17.** These fiduciary relationships create obligations and duties that would not accrue
4 absent the creation of the relationship. Defendant regularly fails to honor those obligations and
5 duties by, among other acts: failing to adequately disclose his conflicts of interest,
6 misrepresenting and knowingly violating the law in the course of his representation, failing to
7 act in the best interests of the property owner, failing to fully inform property owners of all
8 material information regarding the foreclosure process which would guide the principals'
9 decisions, failing to disclose the likely market value of both the real property as well as the
10 likely excess proceeds that will be obtained from the tax foreclosure sale, and failing to obtain
11 independent legal advice for the property owner regarding these transactions that substantially
12 affect rights to valuable real and personal property, instead obtaining attorneys with ongoing
13 relationships with the Defendant contrary to the interests of the property owner.
14
15

16 **4.18.** Each of the allegations in this Complaint refer back to conduct that has
17 occurred. Plaintiff alleges that the described conduct is a material part of Defendant's business
18 practices and is continuing or will continue.
19

20 **V. FIRST CAUSE OF ACTION**
 Misrepresentations

21 **5.1.** Plaintiff re-alleges paragraphs 1.1 through 4.18, inclusive and incorporates them
22 herein by this reference.

23 **5.2.** In the context of conducting his business Defendant made numerous
24 misrepresentations. Such conduct constitutes unfair or deceptive acts or practices in trade or
25 commerce, and/or unfair methods of competition in violation of RCW 19.86.020.
26

1 **VIII. FOURTH CAUSE OF ACTION**
2 **Deceptive Advertising**

3 8.1. Plaintiff re-alleges Paragraphs 1.1 through 4.18, inclusive and incorporates them
4 herein as if set forth in full.

5 8.2. Each year, Defendant causes deceptive advertising to be sent via the mails to
6 thousands of property owners in the State of Washington.

7 8.3. The practices described above constitute unfair or deceptive acts and practices
8 and/or unfair methods of competition in violation of RCW 19.86.020.
9

10 **IX. PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiff, State of Washington, prays for relief as follows:

12 9.1. That the court adjudge and decree that Defendant has engaged in the conduct
13 complained of herein.

14 9.2. That the court adjudge and decree that the conduct complained of in the above
15 causes of action constitute violations of RCW 19.86.020.

16 9.3. That the court issue a permanent injunction enjoining and restraining Defendant
17 and his representatives, successors, assigns, officers, agents, servants, employees, and all other
18 persons acting or claiming to act for, on behalf of, or in active concert or participation with
19 Defendant, from continuing or engaging in the unlawful conduct complained of herein.
20

21 9.4. That the court make such orders pursuant to RCW 19.86.080 as it deems
22 appropriate to provide for consumer restitution.

23 9.5. That pursuant to RCW 19.86.140 the court assess a civil penalty of two
24 thousand dollars (\$2000) per violation against the Defendant for each violation of RCW
25 19.86.020 caused by the conduct outlined in this complaint.
26

The Real Estate Equalizer
P. O. Box 64700
Tacoma, WA 98464

June 28, 2004

Re: King County Parcel Number 509540186004

"Got a Problem? Odds Against You? Call the Equalizer"

Do you remember the television series, "the Equalizer," starring British actor Edward Woodard as Robert McCall? It was on in the mid-eighties and was one of my favorites. I won't lie to you . . . I never missed it!

The Equalizer ran the "Got a Problem" classified ad I've used above and was always trying to help out whoever called.

And you'd better believe those people had all kinds of problems, some of which were even "life or death" kinds of problems! Thankfully, it was just a TV show and the situations the Equalizer took care of were all made up.

Why am I telling you all this?

My name is Joe Kaiser, and people call me "The Real Estate Equalizer," because like television's Equalizer, I solve other people's problems. But I won't kid you . . . I don't use guns or have fist-fights with bad dudes in back alleys. Instead, I use my twenty plus years of real estate problem-solving experience to help homeowners facing foreclosure.

Now, these problems may not be the life and death type of problems Robert McCall faced weekly on the television show, but you'd better believe I understand that foreclosure is an incredibly difficult problem just the same.

Sure, no one dies, but losing a home ranks right up there on the list of things I'd rather not see happen today to you or to me, and that's why I've chosen to send you this letter.

Voice 1 888/206-0427 * Fax 253/565-0803

EXHIBIT A

EXHIBIT A

FD INVEST
002672

If I ran an ad, mine would look something like this . . .



**"Got a Real Estate Problem?
Odds Against You?
Call the Real Estate Equalizer!"**

1 (888) 206-0427

See the problem? Between the two of us, my new little nephew and I couldn't scare a fly. We just don't make a very intimidating pair ;-).

But I'm guessing you really don't need some tough guy "packing heat" to help you right now. You probably need someone who knows the foreclosure business inside and out, who can carefully explain your options to you so you can decide what works best for you, and most importantly, someone who can deliver on his promises.

So, if you've got a real estate problem and find the odds against you, call me right now and I'll help you stop foreclosure and save your property any way I can.

Sincerely,



Joseph M. Kaiser
The Real Estate Equalizer

P.S. No, I don't stop the bad guys in 48 minutes like McCall did each week on television, but I do stop foreclosure in 48 hours (or less). If that's something you absolutely need to see happen right now, call me today.

Voice 1 888/206-0427 * Fax 253/565-0803

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

PROOF OF SERVICE

I certify that I served the completion of Plaintiff's Sixth Supplemental Responses to the First Set of Interrogatories and Requests for Production of Defendants Joseph and Heidi Kaiser to Defendants Joseph and Heidi Kaiser and Amended Complaint as follows:

ABC/Legal Messenger: Steven O'Ban, Esq. of Ellis, Li & McKinstry, PLLC

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 21~~st~~ day of June, 2007, at Tacoma, Washington.



BRENDA NICHOLS