

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 13-083

Judge:	No. 1048214659A
Complainant:	No. 1048214659B

ORDER

The complainants alleged a superior court judge failed to comply with a rule that required him to report serious attorney misconduct to the State Bar of Arizona.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

After reviewing the information provided by the complainants and various court records, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: May 30, 2013.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainants and the judge on May 30, 2013.

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

CONFIDENTIAL

State of Arizona
Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

FOR OFFICE USE ONLY

2013-083

COMPLAINT AGAINST A JUDGE

Your name: _____ & _____ Judge's name: _____ Date: 4/11/2013

Instructions: You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages but not original documents. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

Case No _____ and _____ v _____ and _____ Trial set for _____

At the parties request _____ sked Judge _____ to mediate a final settlement conference before trial. He agreed. On _____ 103 of the OCH, Judge _____ presided over our third conference. He stated he did not get to review the case, & asked Plts attorneys, I _____ summarize the case. They allege Breach of Contract & Fraud, claiming William _____ Masonry (WGM) stopped making equal disbursements to Plts in 2008 and that we were taking Officers Compensation that we were not entitled to. They produced an incomplete copy of the WGM By-Laws that had seven (7) pages, drawing attention to page six (6); where it states Directors are not entitled to compensation. The true and correct WGM By-Laws (which were disclosed in its entirety in our Initial Disclosure Statement and again for Pre-Trial), consists of eleven (11) pgs. On page nine (9); Officers Salaries; it clearly states that the Board of Directors shall set the Officers Salaries and nothing shall prevent them from taking compensation by virtue of the fact that they are serving in any other capacity. At Judge Rayes request, the parties had agreed to share exhibits as there were too many duplicates. Judge _____ showed us the Plts exhibit as it was presented to him and the _____ we told him that there was something missing, but he did not believe us. We did not have a full copy to disprove Plts. _____ stated we had filed a separate case which was consolidated, and _____ had dismissed it, and that they filed a Motion in Limine to Exclude Any and All Evidence Prior to the Year 2006 in this case, so our evidence was inadmissible. O _____ Denied the Plts MIL to Exclude Evidence prior to 2000. He told the _____ that the only asset of WGM was twelve(12) townhomes & the owner of WGM was the individual Irrevocable Trusts of Jeffrey P. _____ of which Jeff was Beneficiary and _____ was Trustee; and the Irrevocable Trust of _____ S. _____ each owning 50% of the shares, and that Jeff & _____ were both shareholders of WGM entitled to equal disbursements. The _____ was given annual totals for the monies we received according to their accounting. Plts counsel told the _____ that we failed to provide them with any financial records, thus breaching the Settlement Agreement dated 12/6/2000. The Plts were only entitled to a copy of the WGM monthly bank statement due to the Plts prior acts of misconduct, which included Embezzlement, Fraud, Breach of Fiduciary Duty, Conversion, and Willful Concealment. We provided a copy of the monthly bank strmts to Plts from January 2001 through October 2011, fulfilling our obligation. Plts knew WGM owed us monies for our unpaid Service Invoices; unpaid Salary; and loans we personally made to WGM. Plts also knew they were ahead in disbursements, and that WGM was suffering financially due to the Plts moving into Units #1 and #5 in January 2006. They said it would only be 4 or 5 months, but ended up being 18 months. Plts promised to pay the \$850/mo per unit, but stopped paying rent after five months, causing a financial strain on WGM. CableTV, water, sewer & trash. On May 27, 2007, a Writ of Restitution for Unit #1 was issued and Plts were evicted for disturbing the peace, drugs, violating the other other tenants right to peaceful enjoyment, and non-payment of rent. We told Judge _____ that the annual totals Plts had provided were incorrect

(Attach additional sheets as needed)

as the Plaintiffs were combining all our Service Invoices to WGM; reimbursements for materials; our Officers pay; and the repayment of loans to WGM; stating it was all Disbursements. They claim they only received \$20,050 in disbursements from 2006 through 2011, but forgot to mention that they were ahead in disbursements in 2007. Plaintiffs claims for damages amount included: their claim we took \$242,020.20 we were not entitled to; payments to our cell phones and internet service \$9,239.33 for 3 years, (legitimate business expenses); their guess-timate for remodeling Unit #2 - \$50,000; loss of income from Unit #2 - \$43,700, (due to Plts storing their personal belongings); \$14,000 - in Pool remodels that they claim will be required in order to comply with County Codes, (we have a letter from County Environmental Services stating we are in compliance); costs for a new roof; rent for Unit #3 for \$14,133.99 that they claim was unpaid while our sons lived there, (Our sons paid their rent while residing in #3, they moved to for work, I can prove that); payments on the mortgage loan totaling \$110,619.88; and the legal fees WGM paid to defend this Case \$4,389.84, (we had to personally pay the legal fees due to the lack of funds in the WGM accounts). **Plaintiffs alleged claims for damages amount totals \$488,103.24**. Plaintiffs were waiving their attorney in excess of \$85,000+ for that day only, (not included in their claim). The **WGM property is valued at \$725,000 to \$850,000**. They claim we took \$242,020.20 and they took \$221,390.25, a difference of \$20,629.75. Defendants, Tom & received \$20,629.75 more than Plaintiffs. & were not involved in the day to day operations of WGM, refusing any and all requests for help from 2002 to 2010.

We argued that the Plaintiffs refused to acknowledge the economic benefits they received from 2006 - 2011. Benefits we did not receive. Their unpaid rent on Unit #1 from January 2006 to June 2007 and Unit #2 from 2006 to February 2007 at \$850/mo per unit, water, sewer, trash, and Cable TV charges of \$31,650; storage fees for Unit #2 where they have stored vehicles, cement mixer, masonry tools & equipment, furniture, boxes & other personal items since June 2007, (repeatedly refused to remove - even after we gave them a \$500 check to rent a moving truck) - \$57,400; loss of income for Unit #2 - \$43,700; cost to repair physical damages did to the WGM property - \$6,666; loss of income for Unit #9 (forcibly & illegally took possession of #9 causing the loss of a prospective tenant) - \$3,400; Administrative costs, (costs for Eviction, Orders of Protection, etc) \$1,240; Plaintiffs IOU's to tenants we paid - \$260; Cost of moving truck - \$500; cost to remodel Unit #2 - \$50,000; attorney's fees paid \$27,074.25. **Defendants damages total \$221,390.25**, (a legitimate offset). Judge did not look at our evidence and he did not require that the Plaintiffs produce any evidence to prove their claims of damages. Judge took them at their word, saying he believed them. We told the that the Plaintiffs had "Unclean Hands", and he still would not allow us to present our evidence of their acts of misconduct.

We stated we had no contact with for almost two years, then Plaintiffs started making demands for certain documents they were not entitled to. In November 2008, we received a letter from them informing us they needed the documents so they could move forward with their attempts to subdivide the WGM property. We had no prior knowledge of it, nor did we authorize it, so we demanded they stop.

Judge told us we would lose at trial. He told us he believed the Plaintiffs and their attorneys as they had no reason to lie. Tom stated that they had \$725,000 reasons to lie. We told him that Judge Rayes had **DENIED** the Plaintiffs Motion in Limine to Exclude Any and All Evidence Prior to the Year 2000, and that the Plaintiffs and their counsel were misleading the regarding the terms of the Settlement Agreement dated December 6, 2000, which was a direct result of the Plaintiffs embezzlement; conversion; fraud; and breach of fiduciary duty.

April 11, 2013

When Judge [redacted] showed us the WGM By-Laws and pointed out page 6, we let him know that there was something missing said we were entitled to the Officers Salary we took. We informed Judge [redacted] that we were supposed to share exhibits with Plaintiffs. The Plaintiffs Trial Exhibits CD had all eleven pages in it. We did not think they would tamper with the evidence.

Tom has very serious heart and other health issues, including diabetes. At the end of August 2011, he had a heart attack and had to have three (3) stents placed. One month later two of the three failed and he had another heart attack. In November 2011, he underwent quadruple bypass surgery. He has Cardio-myopathy, Congestive Heart Failure, Arrhythmia and Diabetes. In February 2012, they diagnosed him with Single Chamber Sudden Cardiac Death Syndrome and they placed a defibrillator in his chest. He started feeling very ill, sweating, dizzy, with heart palpitations due to the stress and his insulin/ blood sugar levels were off. After five hours of hearing we would lose and that we better settle, we agreed to settle the case.

The Minute Entry Order dated 2/19/2013, stated the terms and conditions of the Settlement Agreement as discussed. [redacted] were told to Draft the Agreement for signatures. On 2/22/13, we received their first Draft, which had extra terms and conditions added and they changed the wording. We told them to try again and make it as close to the MEO as possible. We stated that we wanted another hearing with Judge [redacted] to go over and review it before we sign, and were told there was no need to further involve Judge [redacted]. We were asked to send them a Draft of what we felt it should say. We did. Ho & Greene then accused us of trying to delay the signing. They sent us another Draft that also included another separate document they called, "Interest Transfer Agreement", demanding we sign it also. We refused as it was not discussed and the verbage was contradictory to the terms and conditions of the Trusts. We had questions that never got answered.

On March 21, 2013, [redacted] filed a Motion to Enforce Settlement, stating "Counsel for Plaintiffs have submitted Draft settlement documents to Defendants via mail and e-mail. However, Defendants have failed to submit their edits or suggested edits to the settlement documents, and most recently, have ignored all calls, letters and emails from Plaintiffs counsel. . Counsel has provided Defendants with dates and times to personally discuss these issues but Defendants ignored, delayed or have been non-responsive." We filed a Request for Hearing with documentation to prove that [redacted] had violated the AZ Rules of Professional Conduct by making false statements, misleading the [redacted] and tampering with the evidence they presented/provided to the [redacted]. We properly disclosed all eleven (11) pages of the WGM By-Laws in our Initial Disclosure Statement, and again in our Pre-trial negotiations. Their Trial Exhibits CD had all Eleven pages of the WGM By-Laws on it. We attached copies of the emails, letters, the Draft Settlement Agreements (edited, unedited, and our Draft), and the dates and times of phone calls between the parties; a copy of the individual Irrevocable Trust document which included the Waiver/Disclaimer of Interest signed by [redacted] the Minute Entry Order dated 1/24/2013, wherein Judge Rayes **DENIED** their Motion in Limine to Exclude Evidence Prior to the Year 2000; and **ALL ELEVEN PAGES OF THE WGM BY-LAWS**, (*drawing attention to page nine (9); Officers Salaries*).

On April 2, 2013, we held another hearing with Judge [redacted]. He asked Plaintiffs attorney if they had the Settlement Agreement so he could have us sign it. Plaintiffs attorney, [redacted] stated he did not have one ready. Judge [redacted] told him to prepare the Agreement with all of our edits and deliver it to our home that day at 4:00 pm so we could sign it. We believe they did not have the Settlement Agreement ready to be signed, because they knew there was a strong possibility of sanctions, reprimands, and re-consideration or revisions of terms to the Agreement.

ked Judge [redacted] if he received our Request for Hearing. He replied he had read it. We asked if he was going to do anything about it, and he responded **NO**. Judge [redacted] said he would not reverse, revise or re-consider the Agreement. He told us the only difference would be lower damages amounts, as he still felt we would lose the case. He said Judge Rayes may have ruled differently. He told us we could file an appeal. He told us that if we felt Plaintiffs attorneys did something wrong that we could file a complaint with the AZ Bar Association against Ho & Greene, PLLC.

The Plaintiffs claim of damages and amounts were not true and accurate and Judge [redacted] did not require evidence or documentation of their stated amounts. On April 2, 2013, we provided the [redacted] and Judge [redacted] with evidence that the Plaintiffs violated the AZ Rules of Professional Conduct, and evidence that they misrepresented their claim of damages, which we believe to be none. Judge [redacted] refused to allow us to provide the clear & convincing evidence we had that the Plaintiffs and their attorneys were lying, misleading and tampering with the evidence during the February 19, 2013 conference. Judge [redacted] would not reverse, revise, or re-consider the Settlement of 2/19/2013, ordering us to sign it. The terms & conditions of the Settlement Agreement should have been changed as soon as our evidence was given to the [redacted] Plaintiffs claim of damages are little to none, and do not warrant the 100% ownership of a \$725,000 - \$850,000 property, especially a property that the Plaintiffs have not taken any interest in (except for a monetary interest) or helped in the care of since 2002.

Judge [redacted] did not sanction, reprimand, or discipline Plaintiff and their attorneys. Judge [redacted] was aware that the Plaintiff, [redacted] worked for the Law Office [redacted] Id Tom that [redacted] is no longer employed by them as they had to let her go. On April 2, 2013, [redacted] told us that as of 5:00 pm today, they will no longer represent [redacted] & [redacted]

We believe Plaintiffs attorneys didn't bring a copy of the Settlement Agreement ready to sign in [redacted] because they thought Judge [redacted] would reprimand, sanction, or discipline them, and it was possible that he would re-consider the Settlement Agreement. We thought Judge [redacted] would re-visit it, due to our interpretation of Rule 81 of the Judicial Conduct rules.

We are currently suffering extreme financial difficulties and cannot afford to file an appeal. Judge [redacted] knew this and still would not consider changing the agreement. His only concern was settling the case.

The way we interpreted Rule 81 of the Judicial Conduct; Canon 3.(B)(7)(8); (D)(2). Judge [redacted] should have taken appropriate disciplinary actions regarding The Law Offices of Ho & Greene, PLLC, for their misrepresentations, misleading the [redacted] and tampering with the evidence. He admitted it would have lowered the damages amounts. We did not receive a fair hearing. Plaintiffs and their counsel didn't have to produce proof of their claims or any other evidence other than the WGM By-Laws. Judge [redacted] took them at their word. Judge [redacted] would not look at our evidence and did not want to hear anything else we had to say. He told us he felt we had treated them unfairly, but he never heard our side of the story. He was biased.

We were ready to provide evidence of numerous acts of misconduct by the Plaintiffs. They had control of six entities of [redacted] One, Ltd., each an income producing property, from 1991 through January 2001. By 1998, there were only two entities left, and both went into foreclosure in 2000. We got a second mortgage on our home to pay off all the liens, sales taxes and stop the foreclosures. They were stealing cash rents, paying for personal expenses and his Masonry company expenses with WGM, WSG, [redacted] Funds, and changing corporate resolutions, signing documents for Tom without his knowledge or permission. [redacted] signed [redacted] name on a document for the State of AZ Agriculture Dept., had it notarized and turned it in. [redacted] impersonated [redacted] in their negotiations with the State. [redacted] completed a handwritten

financial statement in our names and presented it to a lender. They did not have our permission or authorization to do so. They willfully concealed their fraudulent acts by refusing to turn over the company files, documents, and financial records to us as required. We discovered the missing files in Unit #2 in March 2011. These fraudulent acts of misconduct were done without our knowledge. There are too many acts of misconduct by Plaintiffs to list.

On December 6, 2000, we signed the Settlement Agreement. This was an out of court settlement. Plaintiffs signed over complete ownership of WSG, and P. was allowed to remain a 50% shareholder of WGM, but the Plts had any and all signatory rights revoked, and would never be allowed to serve as Officers, or on the Board of Directors of WGM. As part of the agreement, they would receive a copy of the WGM monthly bank statement and 50% of any Net Cash Flow. They were supposed to turn over any and all files, documents, financial records and other information relating to the companies. They did not. We requested the records and files on several occasions, and were finally told that they had been damaged or were missing.

They illegally took possession of Unit #9 in August 2010, and refused to vacate, even though the police and Judge told them to. We did get a Court Order prohibiting them from visiting the property after they caused damage to the property and caused harm to some of the tenants.

Plaintiffs filed a previous law suit, wherein they were requesting removal of Trustee, and sanctions against me. Their entire case was frivolous, and full of false allegations and statements. They claimed "Due Diligence", but it was obvious they had not even researched anything. was never the Trustee or beneficiary of the JPG Trust. That case was dismissed.

Plaintiffs have harassed, threatened us, defamed our character, and cost us our livelihood. On January 3, 2009, Plaintiffs picketed in front of our residence with a sign that read, was approaching cars as they stopped at the stop sign, wave the sign in front of them, and yell into their cars. On February 9, 2009, we received Orders of Protection against Plaintiffs in favor of Defendants, under protest. They violated it on two occasions.

They have kept us tied up in litigation and legal costs since 2007, vowing to take everything we own, our cars, trucks, house, etc. and destroy us financially. They did just that. This was not the first time the Plaintiffs have done this type of thing.

Plaintiffs caused over \$6,200 in physical damage to the WGM property and caused a financial losses to the WGM company in excess of \$51,000. When will they be made accountable for their acts of misconduct?

On 4/2/2013 at 4:00 pm, brought the Settlement Agreement to our home for signatures. also came to our home. had no reason to show up at our home. A verbal altercation between began. Daniel Ho had a gun, and was showing it to while they were arguing. Their fight stopped when demanded that Ho leave our property, as he was not welcome here, and grabbed I and turned him around stating it was time to go. Our grandchildren (four and two years old) were present in the home. Daniel Ho did not need to be confrontational and he certainly did not need to bring a gun to our home while we signed the documents.