

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 07-056

Complainant: No. 1304310367A

Judge: No. 1304310367B

ORDER

The commission reviewed the complaint, the court file, and the DVD recording of the hearing and found no ethical misconduct on the part of the judge. The issue raised is legal or appellate in nature, and the appropriate remedy is through appeal.

The commission is not an appellate court and cannot change a judge's decisions; therefore, the complaint is dismissed pursuant to Rules 16(a) and 23(a).

Dated: June 11, 2007.

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on June 11, 2007.

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

Key Issue In Case:

- Contract **requires** a Certificate of Occupancy to be obtained by Seller / Builder **before Buyer and Seller can close escrow.**
- Builder – to this day and over 2 ½ years after the closing of escrow - **has never received a Certificate of Occupancy from the [redacted]** for condo unit and garage in question or **on any building in the four building complex.**

Key Reasons for Complaint:

- Arbitrator granted award to Plaintiff, Defendant appealed
- Judge [redacted] was **15 minutes late** to the hearing
- Judge [redacted] only gave approximately 7 ½ minutes (out of a scheduled 30 minute hearing) to each party to present their cases
- Judge [redacted] terminated the hearing by saying she had to terminate the proceedings because she had another appointment
- Judge [redacted] **completely reversed the Arbitrator's decision** and **provided no opportunity for jury trial – despite the fact that a trial date had been set** and, miraculously, granted Defendant's Motion for Summary Judgment
- Judge [redacted] has now granted **only 5 minutes** for each party to be heard at the next hearing [redacted] where she will decide if Defendant's request for attorneys fees should be granted
- Judge [redacted] ruling is – at minimum – unfair and, at maximum, biased

Summary of Events:

- After filing my case against a builder in Superior Court, I went to mandatory arbitration.
- The arbitrator ruled in my favor.
- Defendant appealed the arbitrator's decision
- Judge [redacted] scheduled a [redacted] date for Motions for Summary Judgment to be heard, and scheduled a [redacted] date for trial – if necessary.
- The day of the MSJ hearing, Judge [redacted] was 15 minutes late to the conference, rushed through the questioning of both parties in less than 15 minutes, and then said she had to get off the phone because she had another appointment.
- Just after [redacted] Judge [redacted] ruling was issued. **Not only did she deny our Motion for Summary Judgment, she overturned the Arbitrator's decision – and she granted Defendant's Motion for Summary Judgment, effectively denying a trial.**

In my opinion,

- 1) Her lateness to the proceedings (15 minutes) and subsequent race to complete the teleconference as quickly as possible in order for her to make another appointment was unfair and unprofessional

- 2) That the manner in which this teleconference was held and the lack of sufficient time to present oral arguments resulted in such a complete reversal of the arbitrators' decision and provided no opportunity for trial by jury appears to be only to make it convenient for her schedule.
- 3) That Judge [] gave only 15 minutes (7 1/2 minutes per party) in a scheduled 30 minute hearing for BOTH parties to present their cases suggests to me that either she had made up her mind about the case prior to the hearing.
- 4) That Judge [] has now granted only 5 minutes for each party to be heard at the next hearing [] where she will decide if Defendant's request for attorneys fees should be granted appears - to be only to make it convenient for her schedule.

This case centered on a closing of escrow process on a condominium purchase during the [] housing boom in 2004. Both parties signed the purchase agreement in [] of 2003. It took the Defendant approx. 9 months to deliver the condo unit, with a mutually signed pre-closing (punch list) document in [] Closing date was scheduled by both parties to occur in the last week of []

The Defendant, a builder, 90 minutes before the scheduled closing, demanded [] more than was called for in the purchase contract with no reason and no prior notice of default. The builder - in my opinion - was hoping I would back out of the purchase by not paying the [] they were attempting to extort from me so they would get the condo back and they could then sell the condo for considerably more money (due to the appreciation of the condo unit in the intervening months since the purchase agreement was signed) than what the originally agreed upon sales price our contract required.

However, the clause in the purchase contract regarding the close of escrow procedure between the two parties is unambiguous and clearly states that the close of escrow process was to begin after Builder "receives a Certificate of Occupancy from the City of [] and "notifies the Buyer".

To this day, February 19, 2007, the builder does not have a valid C of O from the City of [] ON ANY BUILDING IN THE FOUR BUILDING COMPLEX including the Clubhouse.

To this day, February 19, 2007, no notice has been given to any homeowner.

Information regarding this lack of a C of O on the part of the builder was submitted to the Arbitrator and to the Court.

After the – shocking – decision by Judge [redacted] to overturn the arbitrator, deny a jury trial, and grant Defendant's motion, I contacted the Mayor of the City of [redacted] and he requested an investigation to be initiated by the City of [redacted] Development Services Department. The letter I received from the City is attached to this document. It clearly states that the Builder did not have a valid C of O from the City and has allowed permanent occupancy without a valid C of O. It also goes on to say that the City Attorney is investigating ways to bring – not just one building – but also the entire complex - into compliance.

The Builder's defense for demanding the [redacted] was that I was, according to them, "delayed in closing". If closing required a Certificate of Occupancy, and the Builder – even today – still does not have one, then, if anything, I closed early ... not late. Therefore, the Builder had no contractual justification for the demand.

The Judge's ruling was in error, and her conduct was unprofessional and unfair.

Please view the attached documents for further clarification.