

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-285

Complainant: No. 1453910762A

Judge: No. 1453910762B

ORDER

The complainant alleged a small claims hearing officer in a landlord tenant case restricted his ability to present evidence supporting his claim because of bias, and a justice of the peace demonstrated bias by refusing to investigate his allegation that the opposing party perjured himself during the hearing.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judicial officers 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 all of the information provided by the complainant and the video recording of the hearing, the commission found no evidence of ethical misconduct and concluded that the judicial officers did not violate the Code in this case. The commission does not have jurisdiction to review the legal sufficiency of judicial rulings. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23.

Dated: December 28, 2012.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the judge on December 28, 2012.

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



OCT 23 2012

REQUEST FOR INVESTIGATION**October 20, 2012**

TO:

Commission on Judicial Review
1501 W. Washington Street, Suite 229
Phoenix, AZ 85007

FROM:

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To Whom It May Concern:

I am writing seeking your assistance on a situation that occurred in the Justice Court. It would appear that certain actions have occurred that may be outside acceptable ethical practices for a branch of the Judiciary. I will acknowledge the restrictions placed on the use of small claims court, i.e. no appeal on the decision. I knew and accepted that fact before we filed our claim. I do also believe that it is imperative for the judiciary not to enter a hearing with preconceived ideas or decisions about a case that is before it. At the beginning of the hearing, all parties took an oath to tell the truth. I also accept this as a fundamental principle in the adjudication of any sort of justice. Only with honest testimony by all parties is justice served. I will also stipulate that people see things differently, and that in itself does not constitute untruthful or dishonest testimony.

However, if that person openly and candidly contradicts their own testimony in other arenas, there is a probability that the person was not being truthful in one or more of those venues. This becomes even more important when that person acknowledges this intentional misleading towards the Court. That is the reason I am writing to you. I have nowhere else to turn. We had leased a townhome from a Licensed Real Estate Broker, Anthony Rossetti, and on August 31st of last year, we moved out. Mr. Rossetti failed to provide to us an itemized list of costs associated with the withholding of our security deposit until October 3rd, well outside the 14 working day limit required by law (A.R.S §33-1321(C) & (D)). Despite our providing, Mr. Rossetti our new address five separate times, starting with our notice to leave, see attached evidence that was submitted, yet he still claimed that he had sent this letter to our old address, the townhome that he managed. Mr. Rossetti had no proof of this, only his word, and the HO weighted that as heavy as our written notices of address change. This showed the HO's predisposition on the case before him.

I will not get into the evidence of that case, as you can do nothing else to change the outcome of that case. I am writing to you because of some of the actions taken in this case by the Hearing Officer (HO) and his supervising Justice of the Peace (JP). Upon his being served with our initial complaint, Mr. Rossetti filed a counter claim for additional losses, which included carpet replacement. To start, in the hearing, both Mr. Rossetti and I took an oath to tell the truth, and informed that the standard of decision-making would be by "preponderance of the evidence". As I started to present my case, Mr. Rossetti interrupted questioning the background

information I was presenting, and the HO concurred cutting me off. Since the decision-making standard was "preponderance of the evidence", veracity of the witnesses was paramount. Not being able to show Mr. Rossetti's past dishonest acts directly undermined my ability to prevail, again nothing I expect to change with this letter. I had two specific claims in my compliant. The HO prohibited any presentation on the second claim. The HO said he was not going to award a \$1 award, and that the Landlord could do anything he wanted. I take issue with this because if it were a correct position by the HO, there would be no Arizona Tenant-Landlord Act. This appeared to me as if he had already decided the case, in favor of the landlord, without hearing any evidence. This is why I am reaching out for help on this matter. How is this fair from the Judiciary, especially when there is no appeal?

The HO went on to say that A.R.S. §33-1321(C) & (D) was only applicable to cases that would rise to the level of fraud, in his opinion. I disagreed contending that the Arizona Supreme Court held a differing view, actually submitting the *Schaefer v. Murphey* ruling, which I am also enclosing the exact copy I submitted including the highlighted areas on page 3. I was uncertain of the HO's reasoning. If he was correct in holding the standard of A.R.S. §33-1321(C) to a level of fraud, then by failing to allow any potential evidence that would support any fraudulent act by Mr. Rossetti, the HO essentially prevented me from any way prevailing in the case being presented under his standard of fraud. It appears that he had a bias against me before I started presenting my case. It appears that the HO has a bias towards the landlord.

What I could present included the itemized letter that Mr. Rossetti sent us and the envelope, please note the date of meter stamp; I have attached a copy of that letter for your reference. This letter was the basis for Mr. Rossetti's counterclaim against us. In that letter are two specific charges discussed in the hearing. The first was the \$275.00 carpet cleaning charge, and the \$430.00 carpet replacement charge. The HO specifically called Mr. Rossetti out for charging for both claiming that he could only charge for one of these, the HO specifically disallowed the cleaning charge. The HO did consider the carpet replacement charge as valid charge and allowed that charge to stand. When the HO recognized the replacement charge, he now placed the higher value on substantiating evidence for that particular charge.

This is where questions arose, yet it was apparent that my questioning any of this would fall on the deaf ears of the HO. I have attached the two invoices that Mr. Rossetti submitted as proof of his costs incurred. Notice that the date of the Jd Home Repair invoice as September 22, 2011, two days after the date Mr. Rossetti claimed to have sent us our itemized list. This is moot, as the HO did not recognize the carpet cleaning. However, the J & R Floor Covering "invoice" now becomes front and center. To start with, the date on this invoice is October 3, 2011, and on line 10, it states to be "ESTIMATE ONLY – customer to advise". Therefore, by accepting this without question or concern, the HO showed his bias towards the landlord again. How did this not rise to the HO's level of fraud, both invoices being dated **AFTER** the September 20 deadline of A.R.S. §33-1321(C) & (D), which was the date of Mr. Rossetti's letter sent to us? This did not prove a reimbursable loss with the security deposit, yet the HO readily accepted it as evidence.

Before this hearing, I requested to Mr. Rossetti to send me this proof, but he refused only to submit them as evidence in his defense at the hearing. Upon receiving, these I immediately noticed that neither of these was licensed contractors. After the hearing, I did some checking and confirmed that the Arizona Registrar of Contractors (ROC) did not have either company on their website, so I filed a formal complaint on each for contracting without a license. The result of the investigation of J & R Flooring is the one that I will focus on. Attached to this is the result of the Public Records Request from ROC. Since this claim centered on an unlicensed contractor complaint, the investigations department of ROC, staffed with Officers of the Court because they frequently file criminal charges, investigated the complaint. All of these investigators come from a law enforcement background, by ROC policy. Mr. Figueroa is no exception. On the 6th page of that file (noted as page 2 of 4), you will see highlighted that Mr.

Rossetti admitted the work was not done, misrepresenting his actual cost justification for the withholding of our security deposit in his sworn testimony before the court, which Mr. Rossetti used in his counterclaimed filed to our suit.

After the hearing, I made the only request available to me in a small claims system, to vacate the decision. I wanted to gain this, so we could re-file in civil court to gain what we lost in the prejudiced small claims process. The basis of my request to vacate was on error and prejudice by the HO, see attached motion. I sent a copy of that motion, in the same manner as the original complaint, to Mr. Rossetti, and he refused to accept it, see attached USPS receipt. Looks like Mr. Rossetti was trying to avoid being accountable for his actions. The JP denied the request for vacating the decision, see attached ruling. It was clear to me; this was the only action I had to "appeal" the outcome of my case.

Later, after receiving the information from the ROC, I sent a letter requesting an investigation into the criminal matter of perjury by Mr. Rossetti. That letter dated March 21, 2012, you will find enclosed for your review, and addressed specifically to JP Sarkis. The Phoenix Police Department directed this action as the means to initiate such an investigation. The Justice Court sent a letter out stating that I had already made my one allotted motion in the case. I could not understand, because the letter is explicit I did not attempt at assigning this as part of that disposed case. I called the Court, explained that I did not make this a motion to consider, but a claim of crime that I was demanding be investigated. The Court told me that the Court does not investigate, and law enforcement had to investigate, see attached response. Also, note that at the bottom of the Court's response it states that the motion would not be ruled on. This was not a motion, but a request for investigation as stated at the top of the request. It appears that the Court once again is supporting it predisposed position that the landlord can "do anything he wants", with no exceptions.

Now the real frustration began. I could not find any law enforcement agency that would look into this. I called Phoenix PD again, they pointed to the Court. I called the Attorney General's office, and they referred me to the County Attorney's office. The County Attorney referred me to the Sheriff's office. MCSO referred me to the County Attorney's office, which referred me back to MCSO, which referred me back to Phoenix PD. I have been told that I have to file a suit, yet when I questioned how I as a citizen files a criminal complaint, I was told that I cannot. Yet no one would accept responsibility in taking a criminal complaint.

Finally, I spoke to a Sergeant at Phoenix PD, and he sent an officer out to take a report. The Officer took the report, and sent to the Document Crimes Division. After almost a year now, I finally got Phoenix PD to reopen this and investigate it, and a report is now at the County Attorney's office for review. In that investigation, according to the Detective, Mr. Rossetti not only admitted that the carpet was never replaced, but that someone from his office most likely created that "invoice" submitted as evidence of his counterclaim towards us.

While looking at the potential perjury issue, I forward to the original Detective the evidence on my second claim that the prejudiced Court failed to hear, and she confirmed that there were some issues with what Mr. Rossetti did with respect to that claim. The potential issue, fraud; sounds like the bar that the HO set but would not allow me to prove. The unheard claim revolved around a water sub-meter that Mr. Rossetti had installed on the townhome. I will not get into the claim in my case, but something does not look right. For instance, look at the attached water bills, sent by another company owned by Mr. Rossetti. The first 2 months say pay to Water Submetering Systems, the billing company. The rest of the water bills say pay to Rossetti Management. I will not argue here the potential issues if this was a reimbursement or not per A.R.S. §33-1314.01(B), since the entire complex was on a master water meter that the HOA paid, and no single unit was billed individually. However, I will argue that this billing anomaly creates questions by itself. Compounding this, Mr. Rossetti's principle (property owner) did not even know of or authorize such a submeter's installation, see enclosed documents from the property owner. Even the City of Phoenix Water Services Department

stated that these bills were suspicious, and possibly fraudulent, yet the Department would not pursue any action. All this, yet the HO still refused to allow me to present my evidence, once again proving his predisposition that a landlord can "do anything he wants", to quote the HO.

It seems clear that the HO had a preconceived idea of this case's settlement before the hearing began, and moved the standard during the process to eliminate any attempt I made to show contrary. Then, upon hearing of the potential perjury charge, the JP, attempting to protect his HO, has failed to do any investigations into the validity of these claims, even when Mr. Rossetti freely and boldly confirms such fraudulent acts.

This Court has continued such actions by refusing to provide requested documents made by me in a Public Records Request. See the attached request dated April 26, 2012. Upon receipt of this, someone from the Court phoned me to confirm the case number, as I had an error in the request. Upon finding the case, I reiterated the need for only Mr. Rossetti's recorded evidence and testimony as I was intending on requesting this criminal investigation. I was to have received the documents soon, according to that person. I never received those documents. On May 23, 2012, I sent a second request to the Court, and confirmed as received, no response given this time. On July 12, 2012, a third request made, again no response except to say they were sent on 4/2012, see attached.

When accounting this reaction by the Court, with Mr. Rossetti's numerous prior Court actions, I think back to the day of the hearing. I walked into the hearing room 30 minutes before the scheduled hearing and found the HO and Mr. Rossetti alone for an unknown amount of time; it becomes difficult not to think that they may have had prior contact about the case that may have swayed the case against me.

What I am seeking is did the Hearing Officer act unethically in the apparent predisposition of this case? Was his moving the bar from "strictures" to "fraud" appropriate in an Arizona Court of Law? By failing to hear the evidence on claim 2, does that constitute clear prejudice in this case? Did JP act inappropriately by not granting the motion to vacate with such clear evidence of the HO noncompliance with a Supreme Court ruling? Did JP act inappropriately with my request of investigation to Mr. Rossetti's conflicting testimony? Did the Justice Court act appropriately by claiming compliance with my public records request, just to renege when it looked like it would compromise the HO and/or the JP? Do any of these actions warrant disciplinary action towards HO and JP? Mr. Rossetti claimed to manage over 300 homes in that hearing, and if this is his standard operating methods, how many others has he injured because of similar behavior?

I appreciate your time in reading this and consideration in this matter.

Respectfully submitted,

10/20/12

DATE