

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-320

Complainant: No. 1406510689A

Judge: No. 1406510689B

ORDER

The complainant alleged that a superior court judge improperly issued a temporary restraining order before conducting a scheduled evidentiary hearing. After carefully considering the information provided by the complainant, the commission found no evidence of ethical misconduct on the part of the judge. The judge acted within her legal authority in issuing temporary orders prior to the evidentiary hearing. The commission is not a court and cannot change a judge's rulings. Accordingly, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: February 25, 2011.

FOR THE COMMISSION

/s/ Keith Stott

Executive Director

Copies of this order were mailed to the complainant and the judge on February 24, 2011.

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

Complaint against Judge

Submitted by

November 16th, 2010

Official Complaint against Judge

Relating to Case No. CV2010- (Exhibit A)

Introduction

On Saturday, September 18 2010, I published a public blog post titled "The Real History of Quest Online" which was specifically designed to defend myself against nearly six months of malicious and defamatory public internet-based attacks initiated by the Defendants of my Lawsuit, namely Derek Smart, who has a reputation of engaging in such abusive behavior spanning more than a decade.

Infuriated I would release facts to the public proving the Defendants were outright lying not only to the public but to the Courts as well, the Defendants attorney Michael Mason of Greenberg Traurig entered Maricopa Superior Court first thing Monday Morning, September 20 2010 to file a Temporary Restraining Order (**Exhibit B**). Note this TRO has a copy of my blog post.

Later the same day, at 4:17pm Michael Mason, representing the Defendants, and one of the representatives of my case, Bryan Gottfredson of Galbut and Galbut, appeared at the preliminary hearing. Mr. Gottfredson informed Judge the Defendants TRO contained fabricated information and outright lies and a hearing was necessary to prove these facts.

The judge agreed and scheduled a hearing for Thursday, September 23 2010 at 9am for a duration of 1 hour.

The next day (Tuesday), the lead attorney on my case, Keith Galbut, received an affidavit from Mason for the individual behind the online abuse (Derek Smart) which contained statements we could prove were false; this included him claiming open arrest warrants in another state were not his even though we had proof they were. This opened the door for us to finally prove in the legal system Derek Smart, one of the key individuals, had committed perjury. We were very excited about this.

Keith called Mason on Tuesday and informed him we had proof the Affidavit contained outright lies and we would nail Derek for Perjury on Thursday. Keith told me he did this as a strategy to get the other side to pursue Settlement on reasonable terms rather than continue with litigation.

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Out of the blue, Wednesday afternoon, we received notification Judge _____ had ruled on the TRO (**Exhibit C**), less than a day before the scheduled hearing – granting the injunction. My attorneys could not explain this, and they said they had never seen a judge do this. Note the ruling does not have a time stamp on it, so we do not know what time on Tuesday the ruling was done. We did, however, receive the notification at 3:16pm.

The reasons for granting this injunction before the hearing were outlined as follows:

1. The consulting agreement requires Plaintiff to maintain the confidence of private information concerning QOL, including the Howes Report. Plaintiff's posting of this Report as well as other private or proprietary matters on this website supports the likelihood of success on Defendants' claim that **Plaintiff breached the confidentiality terms of the Consulting Agreement**.
2. Given the negative remarks concerning QOL and some of its principals, irreparable injury to the reputation of QOL and its principals is likely should the injunction be denied. (The court acknowledges Counts Six and Seven of Plaintiff's Complaint, but notes that Plaintiff has requested monetary damages rather than an application for injunctive relief.)
3. The balance of hardships favors Defendants because the posting does not appear to serve any legitimate business purpose and its removal is easily accomplished.
4. Public policy also favors Defendants because confidential business information should not be disclosed.

Here are the facts regarding the reasons of the court listed above, proving the court findings are highly questionable and unsubstantiated:

Court Finding #1

The attached Consulting Agreement has the name "Jason Blood" in it and has no signature. **This finding is based on an illegitimate document and therefore invalid.** In addition, it is very interesting the Judge specifically mentions the Joe Howe's report here – a report the Defendants do not want to get out because it paints a glowing picture that contradicts their actions and counter suit. It can be used as proof the Defendants (QOL) made up allegations in their counter suit and engaged in unjustified violations. Even more interesting is the fact the report contains absolutely no confidential or trade secret information for QOL. I know this because I created, built, and ran the company for more than four years and have an extensive business background spanning nearly twenty years. Why was the judge so focused on this report when the blog post contained numerous other documents that could have been considered much more sensitive, but were never even mentioned?

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In addition, a copy of the Joe Howe's report was not included in the Motion. How could the judge determine if the report did contain *"information about QOL's financial history, customers, marketing strategy, software design and engineering, business plan, employees, and other information that is clearly confidential and in some cases trade secret"* when it wasn't even included?

Court Finding #2

This finding assumes what the Defendants (QOL) shared was accurate and true. The hearing was supposed to give us the chance to prove what they had presented was not only false, but portions of it were in perjury.

Court Finding #3

This finding makes it clear the judge does not understand the very nature of this case. This was not just a "business case" but a case where the Defendants (QOL) engaged in a massive public campaign of lies resulting in a personal and vindictive attack upon myself and my credibility; all after I had been removed from the company. The posting was for defensive purposes only and designed to prove with factual information QOL had been lying to the public. To have a judge rule the balance of hardship favors the Defendants (QOL) when they had executed an illegal takeover and engaged in a public vendetta is ridiculous.

Court Finding #4

This blanket statement has no detail behind it. The Judge fails to define what "Business Information" means in this case and provides no examples. In addition, such a statement is superfluous and holds no real meaning since *Business Information* is disclosed on a regular basis.

Court Finding Summary

As shown above, each finding by the Judge is either questionable or outright unsubstantiated, and the fact the first finding relates to one document that isn't even legitimate and another she never saw tells me the judge most definitely did not verify the facts before overriding her own decision for a hearing.

A hearing where we would have proven our case to the point of keeping the blog post up and available to the public in defense of myself and the malicious practices of the Defendants (QOL). And even more importantly, a hearing where it would have been made clear to the Defendants that lying was not tolerable in the court system and they would not get away with it.

By ruling the way the Judge did, it sent a message to the defendants that seeding lies and misinformation not only on the internet, but in court documents, was acceptable; and when that happened they jumped on propagating even more defamatory and purposely harmful information to the public, knowing we would have no choice but to accept settlement on their terms.

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The judge failed to represent the checks and balances of the legal process and ensure all details were properly known and verified before issuing a ruling.

Damages caused by Court Ruling

The Judge's ruling caused massive damage to our case on such a scale it resulted in the loss of the case (or known to the court as the "Settlement"). We were never given our day in court, and due to this ruling, my attorneys informed me they would not pursue a hearing because I had run out of funds and Settlement was the only option, and if I did not accept, they would abandon me.

I was forced to agree to and accept a Settlement which was massively detrimental to me and left a monumental amount of destructive lies on the internet specifically designed to inflict harm upon me and my family after the settlement was executed (using the persistence of the Internet).

Also, due to her ruling, as mentioned above, the Defendants were empowered even more to continue posting defamatory information on the Internet, specifically designed to circumvent and survive the inevitable settlement – a supposed counter to the truth and facts I published. It remains today (**Exhibit D**), etched in Google Searches tied to my name, a plethora of lies and hate designed to do only one thing – inflict harm upon myself. And it's all false. **Note the time and date on this posting. It was released only hours after the Judge's ruling.**

The unique nature of this case is this all pertains to a company I built over more than four years, and during those four years I never had a single official complaint from any investor.

Remedy

There is no question the Judge, who works for the state, failed at her responsibilities and empowered the Defendants to execute their campaign of defamation, injurious falsehood, trade libel, negligence, and civil conspiracy. As to what Remedy would be acceptable, I'm not sure offhand – I would first like to hear the state's response regarding this complaint and the validity of it.

Request to keep Address Confidential (and under Seal)

I ask my address during this review this be kept strictly confidential, especially if my complaint is circulated in any fashion.

There are two prime reasons. The first is Derek Smart. During the six months of litigation with QOL and Derek he went on a public rampage engaging in a massive campaign of libel and defamation going as far to make criminal accusations with no basis of proof or fact - his sole goal was to destroy me and my credibility to hide his illegal and malicious acts of lying to the investors and myself. During this process

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he dug into my personal information and released it to the public, including my address and where I lived, the fact I was renting, and proceeded to include the landlord in his web of lies through relation and make extremely damaging insinuations relating to my financial status and more. It was absolute misery - and I'm still dealing with this massively damaging information on the Internet today.

The second reason is Greenberg Traurig empowered Derek to go on this rampage by representing him and even allowing him to throw allegations in the counter suit for which no proof was provided (at all).

Derek also has a criminal history. He currently has three open warrants for his arrest in North Carolina and has a history of physical violence and non-felony fraud. Apparently he has now taken that virtual as his most recent behavior is abusive and fraudulent. In speaking with an individual (who wishes to remain anonymous because they are scared to death of him) who knows him from his past, they said "he is more dangerous than you can imagine".

Derek is the root of the problem, but GT empowered him by representing him. We even provided proof to GT Derek was lying to them, but it was after the lawsuit was settled. We don't know if they are going to pay attention to it or not.

So, this is why I want to keep my address/location safe. I lost everything in the lawsuit and now live with my parents in Washington State. If this information gets out, Derek will plaster it all over the internet causing massive public humiliation to the situation he initially caused where the civil system failed to protect me from a predator solely because I lacked the funds to fight him.

Attached Documents

Exhibit A – Original Complaint

Exhibit B – Defendants Filing for Injunction

Exhibit C – Judge's Court Order

Exhibit D – Derek Smart's "Best Laid Plans of Mice and Men"