State of Arizona

COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 14-177

Judge:

Complainant:

ORDER

The complaint alleged a superior court commissioner's ruling in a case was not justified by the evidence and was contrary to law.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the commissioner 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.

The commission does not have jurisdiction to review the legal sufficiency of the commissioner's ruling. In addition, the commission found no evidence of ethical misconduct and concluded the commissioner did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23.

Dated: August 28, 2014

FOR THE COMMISSION

/s/ George A. Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the commissioner on August 28, 2014.

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

2014-177

From:

To: Commission on Judicial Performance Review and to:
1501 West Washington, Suite 227
Phoenix, Arizona 85007

Multimedia Journalist
Chanel

COMPLAINT AGAINST A **COUNTY**
Judge Respondent

Dear Commissioners:

Please accept this complaint against County

I was a Plaintiff in a before Judge and his action as a Judge falls to the level of being called to your attention. This is in keeping with your interest in upgrading the quality of justice in County.

You will see that this complaint is in the form of the exact Motion for Reconsideration back to Judge himself, to correct his identifiably false judgment and improper performance as a which he exhibited in my case. This is the best way to show the detail and magnitude of this formal complaint against his action(s).

I appreciate this opportunity to do my citizen duty to help your office to do the much needed upgrading of justice here in County. This upgrade must happen so that others will not have to suffer the same court melt down that I experienced.

I would appreciate it if you could inform me that you received this complaint, and, your procedure from here as to action and results. I would like to know if your commission can do something to have errant judges be aware that there are consequences for failure to follow the standards that you have established in your questionnaire that is handed out to all parties that appear before which is how I came to know of your existence and office. Below is a copy of the body of what I sent to Judge

Very truly yours

Motion For Reconsideration

Dear Judge

This brief and Motion for Reconsideration responds to your judgment in this case attached as exhibit "A". Plaintiffs now ask this Court to reverse its ruling because this "judgment is not justified by the evidence or is contrary to law", as per Rule 59(a)(8).

As per Rule 59(a)(8), before this Court can reverse this case, it must order the other side to respond to this brief. **There is no prejudice** to Defendant County to finally respond on the merit – which it has previously refused to do – regarding each point that is already proven to be in favor of Plaintiffs, which justifies relief for Plaintiffs.

This procedure is in keeping with required Judicial Performance Standards, which are administered by the Commission on Judicial Performance Review, to insure that each Court "administer justice fairly, ethically, uniformly, promptly and efficiently" and also that each "decide cases based on proper application of law and procedure to the facts, and to [particularly] issue clear rulings that demonstrate competent legal analysis", and to also "act with dignity, courtesy and patience".

To date, Defendant County merely supplied one small letter that showed a map of the subject grazing area and a copy of A.R.S. 42-12152, and only pled that judgment should be in their favor. Also, the same Defendants, who have the burden of proof in this case, did not refute or deny any part of the four briefs that were presented to this Court by the Plaintiffs. It appeared as though the Defendant County simply expected to sit back and let this Court routinely run and win this case for them.

On the other hand, Plaintiffs complied with every paragraph of governing A.R.S. 42-12152, to justify the change in their property tax classification from that of the very high "vacant land" rate, to be the proper tax rate for "agriculture land", as prescribed by law.

The public should never lose confidence in its Judicial System, which happened here, so Plaintiffs are compelled to ask the Commission on Judicial Performance Review and also Channel to review this matter.

The errors of the subject judgment are now detailed as follows:

The judgment's long second paragraph is only a word-for-word quotation from various Arizona Revised Statutes with no explanation as to non-compliance. Plaintiffs are not at fault with any of these cited requirements and must be given their proper "agriculture" property tax category for their subject grazing acreage in question.

The key error of this Court concerns A.R.S. 42-12151 (3). This statute was never cited or argued by Plaintiffs or Defendants, but this Court somehow *sua sponte* made this paragraph to be a key focus of its finding, which again contained no explanation as to why or why not Plaintiffs did or did not comply with this Statute. Here now is this Court's quoted selection from this statute:

> Agricultural real property is defined in A.R.S. 42-12151, and includes real property that is [g]razing land with a minimum carrying capacity of **forty animal units** and containing an **economically feasible** number of animal units. A.R.S. 42-12151(3) (emphasis added).

This Court completely misconstrued the full aspect of this statute! It is not the land owner (tax payer) himself, who must individually have enough land to sustain forty animal units on his own property. In this case Plaintiff only has ten acres, which is not enough to sustain one animal unit, since typically it takes a full section, or 640 acres (one square mile), to graze only 3.5 cow units, which is standard for the open range conditions of that area.

As per the law, any land owner who lacks enough grazing acreage to sustain a minimum of forty animal units can simply unitize his land with other adjoining land owners, such that the **combined** grazing parcel is able to sustain "a minimum carrying capacity of forty animal units", in order to then form an "economically feasible" grazing operation.

I.e., all the smaller grazing-land owners can combine their land into a larger umbrella operation, which in turn forms a viable grazing enterprise sufficient to sustain at least forty animal units. In this manner, all of these coordinated land owners, who are within this mechanism, do qualify for agriculture tax status. See: A.R.S. 42-12152(3).

Clearly the briefs, exhibits, photos, grazing-land lease copy, and arguments presented by Plaintiffs satisfy this requirement. The grazing operator is Mr.
Over many years, and on a viable "land lease" basis, he has assembled thousands of acres, including Plaintiff's land, upon which hundreds of cattle constantly graze.

Mr. cattle-grazing operation was overwhelmingly shown in the briefs, many exhibits, and at trial, to have always been conducted on a professional basis and within full compliance with BLM regulation for that area as to range management, since BLM has some of the land within this grazing area. This cattle operation always turned a profit and was not just a hobby or a money-losing recreational pursuit, so the "economically feasible" requirement of the statute has always been fully complied with.

Plaintiff and his joined co-Plaintiffs, satisfied all the requirements under all of the Arizona Statutory Laws to qualify their land as being in an "agriculture" category for property tax purposes. Mr. has signed current and valid leases with Plaintiffs and scores of other different land owners, some with large acreages and some with small acreages. All of this land is currently classified as "agriculture" land for tax category purposes, and the land of Plaintiff et al., should be no exception.

By having a correct understanding of this aspect of the law, then all other considerations in this case quickly come into place to easily and fully favor Plaintiffs.

This Court cited A.R.S. 42-12152 as the criteria to gain agricultural status for tax purposes, but it did not detail any non-compliance. This Court merely copied the law into its judgment. Merely citing a law does not mean non-compliance with that law. Plaintiffs did all of these items, but it was only ignored by this Court. This Court wrote:

> Property is not eligible for classification as property used for agricultural purposes unless it meets a number of criteria. A.R.S. 42-12152.
>
> **(1)** With respect to grazing land, the primary use of the property is as agriculture land and the property has been in active production according to generally accepted agricultural practices for at least three of the last five years.
>
> **(2)** Property that has been in active production may be... [g]razing land that is inactive or partially inactive due to reduced carrying capacity or generally accepted range management practices. A.R.S. 42-12152(1)(d).
>
> **(3)** There must be a reasonable expectation of operating profit, exclusive of land (or lease) costs, from the agricultural use of the property. A.R.S. 42-12152(2).

> **(4)** If the property consists of noncontiguous parcels, the noncontiguous parcels must be managed and operated on a unitary basis and each parcel must make a functional contribution to the agricultural use of the property. A.R.S. 42-12152(3).

Plaintiffs fully demonstrated with their briefs, exhibits, documents and testimony that they complied with each of this Court's above true citations from governing A.R.S. law.

The only use for the property has been for agricultural cattle grazing, and the subject property has had no other use. This long-standing grazing ground has always been in active production and it has never been in inactive or partially inactive agriculture use due to reduced carrying capacity, as degreed and governed by the controlling Federal Bureau of Land Management (BLM), which was exhibited to this Court.

There has always been more than the "reasonable expectation of operating profit" on the part of the rancher, Mr. He has been in business for many years and is recognized throughout the community as being a highly respected and longtime professional and experienced cattle operator.

Plaintiff's non-contiguous parcels are combined to be "managed" and "operated" on a "unitary basis" and are fully within grazing unit "A", of the total ranch property. Each of these parcels also make a "functional contribution" to the overall and viable "agriculture use" of the property, which totals many thousands of acres and runs several hundred cattle – for profit – every year, which is far more than the minimum number of forty animal units required to gain "agriculture land" status for property tax purposes.

All of this information was well briefed in Plaintiff's many documents and exhibits to this Court and none of it was never refuted or denied by Defendants.

The final paragraph of this Court's judgment gives an additional "clue" as to why this Court improperly favored the County taxing authority, which is now quoted:

> [The] valuation as approved by the appropriate state or county authority is presumed to be correct and lawful. A.R.S. 42-16212.

This telling *sua sponte* ruling by this Court – which neither side argued for – only shows that this Court was biased and pre-disposed in favor of the Defendant "county authority", which this Court indicates it automatically "presumes" did not make a mistake. Apparently, all of its taxing decisions will be routinely sustained by this Court. A review of the "track record history" of the decisions of this Court will follow later.

In paragraph three, this Court erroneously ruled that "**Plaintiff** did not meet the burden of proof at trial". To the contrary, as shown by the evidence, the exhibits and the governing statutory law, Plaintiffs overwhelming showed that the assessor's denial of agriculture status for this property was in error.

Moreover, it is not the "Plaintiffs", but rather it is the County "Defendants" who have the burden of proof to show this Court that they did not make a mistake in their tax category determination. A.R.S. 42-1255 states as follows:

> The department (not the taxpayer) has the burden of proof by a preponderance of the evidence in any administrative or judicial proceeding regarding any factual issue that is relevant to ascertaining the tax liability of a taxpayer.

If this Court is going to "presume" that County's is the same as the "department" and that its tax decisions are initially correct, but are subject to proof, then this Court must also require County to have the "burden of proof" that indeed, its initial decisions are correct.

County, through its counsel, did not prove by any evidence, or preponderance of evidence, that the subject property should stay "vacant land" rather than be properly reclassified as "agriculture land". To the contrary, and in any event, the Plaintiff taxpayers did prove, by witnesses, documents and four briefs with more than twenty exhibits, including the Lease Agreement with Mr. that judgment should be in Plaintiff's favor on this matter. Defendants did not refute or deny any of this material.

To continue, this Court did rule that Plaintiffs "relied on a purported grazing lease entered into with

Answer: This is exactly true! This lease was provided to this Court and it is undisputed proof that the land is used for agriculture grazing, to a viable rancher, who was shown by testimony and briefs to have assembled thousands of acres of land for viable grazing purposes. Defendants did not dispute this fact so the **preponderance of evidence** favors Plaintiffs and their subject land should be reclassified as agriculture land.

This Court continues as follows:

> Plaintiff tellingly describes the mutual purpose of the lease ... is for the rancher to have the benefit of running cattle on the subject property and the land owner has the benefit of an Agriculture Classification for the land. Letter to Court dated

Answer: This is exactly true and is typical standard procedure under the law. By acknowledging this lease, even though this Court appears to be biased against it, this "grazing purpose and fact" is all that legally matters to solidify a "viable agriculture use" for the property, which is the sole duty and jurisdiction of this Court to determine. This Court is not empowered to weigh the merit, or the cost of the land, or the cost of the lease, but only to rule that there is an *operational agriculture use,* which establishes the necessary criteria for an *agriculture tax classification*, as provided by A.R.S. Statute.

By continuation, this Court also writes in its judgment:

> In essence, the parties to the grazing lease are declaring that the Parcels should be classified as agriculture for tax purposes.

The answer is yes, this is exactly the purpose of this lease. This Court also wrote:

> Notably, Mr. did not testify on behalf of Plaintiff at trial.

Answer: It is not necessary for Mr. to testify. The preponderance of evidence in favor of Plaintiffs was already achieved without any objection from the Defendants. The facts are already plain and are not in dispute on this matter. It was up to Defendants to write responses to Plaintiff's showings, or to call witnesses to oppose the testimony of Plaintiffs, but Defendants – who have the burden of proof – did nothing.

Moving on, proper agriculture tax justice is on the line not just for County, but for all of the state of Arizona as well. For these reasons and others stated in this Motion for Reconsideration, the false judgment of this Court must be reversed.

Finally, the kingpin and surprising testimony at trial from Mr. as to why Plaintiff's property tax classification was denied by the Assessor, and opposed by the Assessor in this Court, is that County lacked funds; had experienced a hiring freeze; and the Assessor's office determined that income would increase by merely declassifying agriculture land to be vacant land, to gain more tax revenue in this manner.

This open disclosure by County is a brazen, admitted and mischievous attempt to circumvent established statutory law as shown. It is the "safeguard duty" of this Court to stop this heinous "money grab" and mutilation of the law.

RESPECTFULLY SUBMITTED this lay of

By