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Consumer Protection Act Applies to Business Purchase of a Sign

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The court determined that in order to prove a violation of the CPA, the investors had to prove that the Denver's act (1) was unfair or deceptive, (2) occurred in the conduct of trade or commerce, (3) affected the public interest, and (4) caused injury to the plaintiff in his or her business or property. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 796 P.2d 531 (Wash. 1986). To establish that misconduct occurred in commerce or trade, the investors had to demonstrate that the legal services in question related to "entrepreneurial aspects" of the practice of law.

The investors argued that if Denver had not concealed his potential conflict of interest, they would not have employed him. The investors contended that this deceptive practice constituted part of the "entrepreneurial aspect" of Denver's practice because he was able to secure them as paying clients.

The court did not agree with the investors' argument because a material issue of fact existed as to whether Denver acted for the purpose of increasing profits or gaining clients. The court therefore reasoned that the investors did not prove Denver's intent to conceal the risk of conflict in order to further his personal entrepreneurial interests.

Finally, the court rejected the investors' claim that the trial court erred in refusing to award treble reimbursement damages or attorney's fees. The court reasoned that the question of Denver's liability under the CPA remained unresolved, and thus damage awards were premature. However, the court speculated that even if a CPA violation was found, the trial court had complete discretion to decide whether to award attorney's fees. Furthermore, the trial court's decision on this issue would not be overturned absent a manifest abuse of discretion.

Dissent Rejects Conflict of Interest Disclosure Requirement

In his dissent, Justice Johnson maintained that the CPR encompassed situ-

ations where conflicts of interest were likely, not merely possible. He reasoned that since there was a factual issue concerning Denver's failure to disclose a likely conflict of interest, the conclusion that Denver violated the CPR was unfounded. Furthermore, Johnson argued that the majority's holding placed an unreasonable burden on attorneys because there were potential conflicts of interest in almost every case of multiple representation, and an attorney cannot foresee every conceivable situation.

Dissent Advocates Mandatory Award of Attorney's Fees

Justice Johnson also dissented with respect to the scope of the trial court's discretion in awarding attorney's fees under the CPA. He maintained that since the statute mandates attorney's fees, the trial court only had discretion in the amount of the fees. ♦

— *Jean Prendergast*

Consumer Protection Act Applies to Business Purchase of a Sign

In *Sign-O-Lite Signs, Inc. v. DeLaurenti Florist, Inc.*, 825 P.2d 714 (Wash. 1992), the Washington Court of Appeals held that the Consumer Protection Act ("CPA") applied to the purchase of a sign. Additionally, the court held that in the CPA violation, the lower court properly awarded attorney's fees to the consumer.

Sign on the Dotted Line

Ann DeLaurenti ("DeLaurenti") owned and operated DeLaurenti Florists, Inc., a floral shop located in a shopping plaza. In April 1986, DeLaurenti learned that the plaza had adopted a policy that required all shops in the plaza to advertise with

Channelume signs. Realizing that her current wooden sign was unfit, DeLaurenti sought bids and estimates from various sign manufacturers for the cost of a Channelume sign.

Chuck Kelly was a representative of Sign-O-Lite Signs, Inc. ("Sign"), a manufacturer of custom Channelume signs. When Kelly learned of DeLaurenti's interest in buying a sign, he solicited DeLaurenti at her floral shop and offered to submit a bid. DeLaurenti agreed, and consequently Kelly later called DeLaurenti and quoted her a six year lease for a sign at \$91.04 per month, or a purchase price for the sign of \$2,901.60. Sign's bid for the sign was lower than any other company that DeLaurenti contacted, and therefore, she accepted Sign's offer.

Subsequently, Kelly visited DeLaurenti's floral shop and presented her with a document that he wanted her to sign. Before signing the document, DeLaurenti informed Kelly that she did not have her reading glasses present. However, Kelly assured her that the document only authorized Sign to begin work; DeLaurenti signed the document. DeLaurenti did not see Kelly write anything on the documents while he was at the store.

Kelly failed to provide DeLaurenti with a copy of the signed document or any other description of the terms of the purchase. Instead, DeLaurenti relied solely on the representations that Kelly extended particularly to her, the \$91.04 per month lease charge and the \$2,901.60 total purchase price for the sign.

Later, Sign sent DeLaurenti an invoice for \$297.42 per month for the lease of the sign. Since this price was over three times the rate Kelly quoted her, DeLaurenti refused to pay the invoice. DeLaurenti later demanded copies of the documents that she signed. When she received the copies, DeLaurenti noticed that the lease charge of \$297.42 per month was written on a line in the document. Realizing that the agreement was not anything that she bargained for, DeLaurenti refused to

pay the invoices that Sign subsequently mailed to her.

Sign filed a collection suit against DeLaurenti, alleging breach of contract and unjust enrichment on DeLaurenti's part. DeLaurenti counterclaimed and alleged that Sign violated the CPA. The Washington trial court held that Sign violated the CPA and awarded DeLaurenti treble damages and attorney's fees. Sign appealed the decision to the Washington Court of Appeals.

Sign's Arguments Unplugged by Appellate Court

The appellate court first addressed Sign's argument that the trial court erroneously submitted the CPA claim to the jury because insufficient evidence existed to support it. The court noted that a CPA violation occurs when (1) the action complained of is a deceptive act or practice; (2) the action occurs in the conduct of trade or commerce; (3) sufficient evidence of public interest is presented; (4) injury to a business transpires; and (5) a causal link exists between the deceptive act and the injury.

The court found that DeLaurenti demonstrated all the elements of a CPA violation and upheld her claim under the CPA. First, the court stated that Kelly's misleading DeLaurenti into believing that she was signing a work authorization form constituted an unfair act or practice in trade. Second, the court found that Kelly's capacity as Sign's agent presented sufficient evidence of an impact on the public interest. The court also found that DeLaurenti suffered injury to her business, therefore meeting the fourth element of a CPA violation, because DeLaurenti had to spend time addressing the contract dispute rather than attending the store. Lastly, the court concluded that the deceptive act directly caused the injury to DeLaurenti's business. Thus, the appellate court affirmed the trial court's finding that Sign violated the CPA.

Treble Damages Too Much

The court, however, agreed with Sign's contention that treble damages were improper since DeLaurenti could not prove any actual damages. In its determination, the court concluded that attorney's fees were not actual damages as contemplated by the CPA. Furthermore, the court concluded that DeLaurenti's general and uncorroborated estimate of her lost profits also failed to constitute actual damages. Therefore the court held that since DeLaurenti could not prove any actual damages, her claim for treble damages was unsubstantiated.

Attorney's Fees were Reasonable Awards

Although Sign did not dispute that the CPA entitled DeLaurenti to attorney's fees, it did argue that the trial court improperly calculated the award of attorney's fees. The court, however, reasoned that the trial court had discretion in awarding attorney's fees, and thus, upheld the trial court's determination. Furthermore, the appellate court noted that in its determination, the trial court segregated the fees to the extent possible between the CPA theories and other legal theories presented by DeLaurenti. The appellate court deemed such action appropriate, and therefore concluded that the lower court acted within its discretion.

Dissent Argued that Shop was Not Significantly Injured

In his dissent, Judge Scholfield stated that the evidence of injury to the floral shop was insufficient to support the award of attorney's fees. To support this claim, Scholfield stated that neither attorney's fees in prosecuting a CPA violation nor the time devoted to the CPA litigation were sufficient proof of injury. Thus, Scholfield concluded that DeLaurenti failed to present sufficient evidence that she suffered a legally recognizable injury. ♦

— Ellen M. Sfikas

Toll-Free Phone Line Failed to Provide Adequate Warning Under California Statute

In *Ingredient Communication Council, Inc. v. Lungren*, 4 Cal. Rptr. 2d 216 (Cal. Ct. App. 1992), the California Court of Appeals held that a toll-free phone line warning system failed to clearly and reasonably warn consumers about dangerous chemicals contained in consumer products and therefore violated California's Safe Drinking Water and Toxic Enforcement Act of 1986.

Failure to Warn

California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Act") forbade any person or entity from intentionally or knowingly exposing anyone to a chemical associated with cancer or birth defects without first giving "clear and reasonable" warning. The Act acknowledged that generalized warnings such as product labels, posted notices, and notices in news media adequately warned consumers, assuming that they were "clear and reasonable." The California State Health and Welfare Agency ("Agency") administered the Act and promulgated regulations defining appropriate conduct under the Act.

The Ingredient Communication Council, Inc. ("Council") is a non-profit corporation consisting of thirty-seven manufacturers, retailers, and agricultural producers involved in marketing thousands of products in California stores. Founded in 1987, the Council sought to help its members comply with the Act. The Council established a consumer warning system based on a toll-free phone line in conjunction with newspaper advertising and signs posted in stores. Although the Council's advertisements and signs failed to identify those products which required warnings under the Act, they invited consumers to call a toll-free