

The Courts Are Everyone's Business

How a Consumer Protection Lawsuit Turned into a \$800,000 Legal Tab and An Attack On Attorney Client Privilege: Effort Aided By Conflicted Judge

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Jan. 1, 2013. We are two Redmond, Washington homeowners. On October 5, 2011 we were sued by our former law firm, Lane Powell. In response, we told the court the following:

We Give Lane Powell Well Developed CPA Case. In 2007, after representing ourselves for 18 months in a Consumer Protection Act (CPA) lawsuit against the state's largest real estate company (Windermere), a construction company, and a number of others, we engaged a young lawyer to take us to trial. The young lawyer had *just* been hired by Lane Powell, a 200-lawyer international law firm.

But we did not know that Grant Degginger, Republican political hopeful and Mayor of Bellevue, would be supervising the young man. Nor did we know that Mayor Degginger was concurrently presiding over the biggest real estate/construction boom in Bellevue's history -- that he had a relationship with the very forces we were opposing in our CPA suit.

We discovered early that Windermere had a history of preying on the Washington public. We found that the Department of Licensing (DOL) at the Attorney General's office (AGO) were permitting Windermere flout the very laws the agencies were supposed to be enforcing. (See Dkt. 24, Ex. I) Unprotected by public law, wronged customers were forced to use the courts to recoup their losses. But there again Windermere won by using scorched earth litigation tactics, spiraling legal expenses of the wronged consumers into the stratosphere. Consumers were forced to settle for a pittance and sign onerous non-disclosure agreements. We became active and vocal critics of this system of public corruption. Our complaints inspired the Auditor's Office to conduct an investigation. Yet Lane Powell refused to present this very relevant evidence to the courts during the prosecution of our case.

We ultimately won a Pyrrhic victory over Windermere. Among other things: Lane Powell refused to take action to halt Windermere's scorched earth litigation tactics, and at the same time mined our case for legal fees: It put 27 timekeepers on the case and even assigned lawyers and high paid paralegals to do photocopying (to the tune of \$42,000.) Lane Powell failed to ask for awards that were due us, failed to tax Windermere for costs and fees that it billed to us. Lane Powell secretly agreed with Windermere to reduce the court-ordered 12 percent post-judgment interest rate to 3.49 percent while at the same time demanding we pay Lane Powell 9 per cent interest on fees owing; despite specific contractual obligations, Lane Powell failed and refused to protect various aspects of our awards on appeal; refused to accept our directions regarding a Supreme Court petition, and while doing so, -- *in writing* -- downright lied to us about the function and powers of the Supreme Court. We now realize Lane Powell violated RPC 1.8(h) (1) when it wrote and had us sign its fee agreement, and had, early in its representation, acquired a proprietary interest in our suit, in violation of RPC 1.8(i).

In brief: During the course of its four-year representation of us (from 2007 to 2011), we believe Lane Powell committed acts and omissions which disadvantaged us and advantaged Windermere and Lane Powell; and effectively protected public corruption by refusing to tell the courts about the organized flouting of public law.

We have already paid Lane Powell approximately \$313,000. With a decision issued on 12/14/12 (Dkt. 333), Lane Powell has been awarded another \$422,675.45 -- for a total of \$735,675.45. We also had to pay more than \$100,000 from our own pocket for other legal expenses.

Development of This Present Lawsuit: On August 3, 2011, in order to prevent Lane Powell doing further damage to our case, we terminated their representation. On the same day, Lane Powell filed a lien on

the upcoming judgment. We hired a fees-dispute/malpractice attorney to negotiate a settlement; on September 22, 2011, Paul Fogarty sent a 19-page issue analysis to Lane Powell. (Dkt. 135, Ex. M.) But on October 5, 2011, even before the Windermere suit went to final judgment, Lane Powell filed suit against us. Lane Powell was represented by Robert Sulkin and others at McNaul Ebel Nawrot & Helgren.

Attack on Attorney-Client Privilege. On the same day it filed suit, Lane Powell served discovery requests, demanding that ALL our attorney-client privileged information on ALL subjects be placed into evidence -- not just those relevant to the issues in the suit. That is, Lane Powell made discovery demands in violation of Civil Rule 26(b).

Using Legal Process To Extort. The day after it filed suit, Lane Powell's attorney, Robert Sulkin, phoned Paul Fogarty and promised that Lane Powell was willing to pay "\$800,000" in legal fees in the litigation to recover "\$300,000." (Dkt. 103, Ex. L) That is, Lane Powell threatened to consume the entire Windermere lawsuit award in scorched earth litigation if we did not submit to its fee demands. We could not afford \$800,000 in legal fees to meet Lane Powell's attack, and thus could not afford to hire a lawyer to represent us in the suit. Understandably, we have thus far not been able to find a contingency lawyer to take on the case. Lane Powell has effectively denied us legal representation.

We believe Lane Powell's threats -- to force our confidences into evidence unless we pay up and to force us to match \$800,000 in fees expenditure -- constitute blackmail and extortion, albeit under color of law.

Conflicted Judge Assigned to Case. While the Windermere lawsuit was still in the Seattle courthouse, Lane Powell's lawsuit was assigned to Richard D. Eadie. From the beginning, Judge Eadie knew of our political activism against the corruption that secures Windermere's position in the marketplace. In August, 2012, we learned he is married to a Windermere broker. Over the last nine years, the judge's family has enjoyed at least \$289,000 in income from Windermere; he is also a beneficiary of the Windermere Retirement Plan. We asked Judge Eadie to recuse himself. (Dkts. 196; 304.) He has refused. We have since learned that of the 30-odd judges on the Superior Court bench in October, 2011, Eadie was the only one with a Windermere spouse.

In a series of seemingly non-sequitur and contradictory orders, Judge Eadie has repeatedly ruled against us. He refused to grant us discovery protection, and denied us a court-supervised discovery plan. He also refused to clarify his orders on privilege (Dkt. 53), then led us to believe he was protecting our privilege (Dkt. 98) and on April 27, 2012, without a finding of fact or a ruling of law, and without any prior ruling that we had waived privilege, he held us in contempt and sanctioned us for not producing privileged documents in discovery (Dkt 106A). He then stated our alleged discovery offenses gave him "no choice" but to strike all our counter-claims and defenses (Dkt. 164). Lane Powell had argued that the prosecution of its claims was "completely stymied" by our refusal to produce privileged documents, but later argued it had all the evidence needed for summary judgment, which Judge granted (Dkt. 333). In that same order (Dkt. 333), he required further fact-finding. Judge has refused to compel Lane Powell to produce discovery materials, and ruled against our motions even when Lane Powell failed to file timely opposition. Judge accepted Lane Powell's proven lies and forwarded them as judicial verities.

Lane Powell Breaches Attorney-Client Privilege. Lane Powell's counsel, Robert Sulkin, has, according to his own testimony, put into evidence information and documents Lane Powell allegedly acquired during privileged communications with us. (Dkt. 315.) That is, through self-incrimination, Lane Powell has effectively admitted to violating the codes and laws of Washington.

We don't know how it came to be that law is practiced and justice is administered like this in Washington; but we will do our best to see the anomalies are corrected.

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