

JOHN W. DEMCO\*  
MELANIE A. LEARY  
MATTHEW F. DAVIS  
LARS E. NESTE\*  
BRANDI L. ADAMS

**DEMCO LAW FIRM, P.S.**

5224 WILSON AVENUE SOUTH, SUITE 200  
SEATTLE, WASHINGTON 98118  
(206)203-6000 - (888)903-3626 - (206)203-6001 (FAX)

PHILIP T. MATTERN  
DAVID C. DANIEL  
J. CASEY SCHERER  
L'NAYIM SHUMAN-AUSTIN

\*ALSO ADMITTED IN  
OREGON

July 31, 2007

Hon. Charles W. Mertel  
KING COUNTY SUPERIOR COURT  
Dept. 1, Room E-955  
516 Third Avenue  
Seattle, WA 98104

Re: Settlement Conference – Windermere v. Kruger, NO. 05-2-34433-4 SEA  
August 1, 2007 12:00 p.m.

Dear Judge Mertel:

I greatly appreciate your willingness to conduct a settlement conference in this case. I truly believe that this is a case that can be settled with your input.

From Windermere's perspective, this is a case of corporate bashing that went too far. In 2002, Gary Kruger sued Windermere, and his case was dismissed on summary judgment in 2004. Instead of appealing, he embarked on a prolonged campaign against Windermere and the Windermere defendants. The question in this case is whether he crossed the line from legitimate consumer protest to slander or commercial defamation. We believe that he has.

Mr. Kruger's initial lawsuit arose from his purchase of a house. After moving in, he found evidence of a prior rat infestation, including many rat carcasses in the walls. Windermere had represented the sellers when they bought the house, and the same agent listed it for sale. In the initial purchase, the inspector recommended a few measures to prevent rats from entering the crawl space, but did not note any evidence of an existing or prior rat infestation. When Windermere initially responded to Mr. Kruger's complaints, the agent had forgotten this detail from the purchase years earlier. The case was dismissed because the inspector's comments and the conditions he noted were not material facts as a matter of law. Mr. Kruger, however, seized upon the comments in the inspection report as proof that Windermere knew about the rat infestation and intentionally deceived him.

In an effort to force Windermere to settle with him, Kruger first started sending letters to most if not all Windermere offices in the country. These letters made statements such as:

This letter and its accompanying exhibits will focus on the lies and treachery of Windermere Northeast Sales Associate George Rudiger and his prevaricating, complicit Designated Broker/Owner, Joan Whittaker, so corrupt and cowardly that they chose to dupe me and destroy my entire life and financial future, merely to sell a filthy home which they'd already sold once before and did not disclose to me, both aware t had been severely infested with rats.

July 31, 2007

Page 2

He also created an internet web site, [windmerewatch.com](http://windmerewatch.com), to repeat these claims. The website has since been shuttered, but Mr. Kruger still owns it.

When this tactic did not bring about the desired results, Kruger began mailing post cards to Windermere clients, apparently mining public information to obtain addresses. In these mailings, he continued to assert that Windermere knew about the rat infestation and had intentionally deceived him.

You have the right to know that during the sale of your property, if a question about the ethical conduct of your Windermere Northeast real estate agent arises, Owner/Broker Joan Whittaker will lie for that agent instead of protecting you and your home.

The mailings encouraged property owners to cancel their listings with Windermere ("Don't Risk it! Cancel your Windermere Northeast listing."). These mailings were sent to clients of other Windermere offices as well.

When Kruger refused to stop his mailings, Windermere commenced this action. In response, Kruger filed counterclaims in an effort to relitigate his 2002 case. Those counterclaims were dismissed on summary judgment. Kruger has also filed a motion to reopen the 2002 case and filed a bar grievance against me. He has hounded the Department of Licensing without success to pursue disciplinary action against Windermere.

Windermere is keenly aware of the rights of consumers to air their grievances and even to encourage the public not to patronize a business. It is not Kruger's campaign, but the specific false and damaging statements he made in connection with them that form the basis of this case. Legally, this case is founded on *Caruso v. Local Union No. 690*, 100 Wn.2d 343, 670 P.2d 240 (1983), in which the Supreme Court held that "do not patronize" requests are protected speech, but that statements made in connection with them are subject to defamation claims. *Caruso* also contains a good explanation why the false statements made by Kruger are libelous per se.

This case is not about money. Windermere simply wants Kruger to stop. In a settlement, Windermere simply wants Kruger to agree to leave Windermere alone and to cease all aspects of his campaign. Windermere's concern is that a mere agreement by Kruger to refrain from making his allegations will be insufficient. It therefore wants security for any settlement in terms of a stipulated injunction or a consent decree. No money would change hands.

To give you some context, I personally have been dealing with Kruger for four years now, and I have come to know him fairly well. I think it would be fair to say that Kruger is consumed by his animosity towards Windermere. He has never accepted the judgment in his 2002 case as final, and he maintains hope that a large settlement with Windermere is just around the corner. I have tried to convince Mr. Kruger that he had his chance with the legal system and needs to live with the result even if he disagrees with it. My own dealings with Mr. Kruger

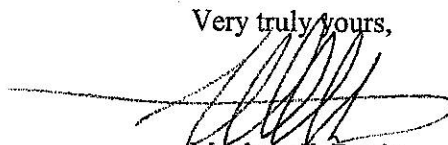
July 31, 2007

Page 3

follow that pattern. Mr. Kruger is prone to speak highly of me one day and then file a bar complaint the next. Any settlement needs teeth so that everyone can finally put this matter to rest once and for all.

I look forward to a productive meeting and hearing your perspective on this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Matthew F. Davis', with a long horizontal flourish extending to the left.

Matthew F. Davis

MFD:emk

cc: Joan Whittaker  
Paul Drayna

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