

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

The Illinois Real Estate Lawyers Association,)
an Illinois not-for-profit corporation,)
)
Plaintiff,)
)
v.) No. 00 CH 10063
)
Koenig & Strey, Inc., an Illinois corporation,)))
d/b/a Koenig & Strey/GMAC Real Estate,)
and Koenig & Strey Title Company, Inc.,)
an Illinois corporation, d/b/a Ft. Dearborn Title)
Company,)
)
Defendants.)

CONSENT DECREE

Plaintiff Illinois Real Estate Lawyers Association and defendants Fort Dearborn Land Title Company, an Illinois corporation d/b/a Koenig & Strey Title Company, and Koenig & Strey, Inc., hereby present the following Stipulated Facts and Decree on Consent:

STIPULATED FACTS

1. Plaintiff brought this action against defendants, alleging that defendants were participating in the unauthorized practice of law and/or facilitated the unauthorized practice of law by others. Plaintiffs sought injunctive relief prohibiting defendants from engaging in the unauthorized practice of law.

2. Defendants denied plaintiff's allegations in their entirety, and asserted a number of affirmative defenses. In addition, defendants filed a Counterclaim alleging that plaintiff's lawsuit was brought for improper purposes, and disparaged defendants' services to defendants' clients and the public at large. Defendants sought declaratory relief and an

injunction prohibiting plaintiff and its members from engaging in such conduct, and also sought defendants' attorneys' fees and costs.

3. Plaintiff denied defendants' allegations in their entirety and asserted a number of affirmative defenses.

4. The parties have engaged in discovery of the claims made by both sides. The parties now desire to settle their differences and avoid the further expense and uncertainty of protracted litigation by entering into this Consent Decree, to be enforceable by the Court.

JURISDICTION

This Court has jurisdiction over the parties and the subject matter of the Complaint and Counterclaim.

BINDING EFFECT

While in effect, the Consent Decree shall bind and inure to the benefit of all parties hereto and their respective successors and assigns.

DEFINITIONS

A. "Plaintiff" or "plaintiff" shall mean The Illinois Real Estate Lawyers Association, an Illinois not-for-profit corporation ("IRELA").

B. "Defendants" or "defendants" shall mean Koenig & Strey, Inc., an Illinois corporation ("KSI"), and Fort Dearborn Land Title Company, an Illinois corporation d/b/a Koenig & Strey Title Company ("KST"), including their officers, directors, employees, brokers, sales persons, sales assistants, and agents. Koenig & Strey, Inc. and Fort Dearborn Land Title Company, Inc. d/b/a Koenig & Strey Title Company, are wholly owned by GMAC Home Services, Inc., 477 Martinsville Road, Liberty Corner, New Jersey.

C. For purposes of this Consent Decree, the “practice of law” shall mean that conduct constituting the practice of law under the common law of the State of Illinois, as defined or later refined by decisions of the Supreme Court of Illinois including, but not limited to, *Chicago Bar Ass’n v. Quinlan and Tyson, Inc.*, 34 Ill.2d 116, 214 N.E.2d 771 (1966), or as may further be defined or refined or reversed (in whole or in part) by any subsequent, binding decision of that Court, the Illinois Appellate Court for the First District, or any other Illinois appellate court, or any statute enacted by the Illinois General Assembly. For illustrative purposes, the practice of law shall generally be considered to be the exercising of judgment or providing advice on a legal matter by someone acting in a representative capacity, which exercise of judgment or advice requires the use of legal knowledge, skill and experience. Without limiting the foregoing, and in addition thereto, the practice of law shall include but not be limited to the preparation of deeds, mortgages and other legal instruments or muniments of title that are or may become matters of permanent record. Nothing in this Consent Decree shall be deemed to define the “practice of law” in any way that varies or alters the meaning given to that term under Illinois law as has been (or may in the future be) defined or refined or reversed by the Illinois Supreme Court, Illinois appellate courts or any statute enacted by the Illinois General Assembly. This Consent Decree shall be, for all purposes hereunder, interpreted consistent with the law in Illinois as it exists from time to time. In the event that the Illinois Supreme Court, the Illinois Appellate Courts or the Illinois General Assembly changes any obligation herein described, then that provision or obligation shall be interpreted consistent with existing law, and the remainder of the terms and obligations of the Consent Decree shall remain in full force and effect.

D. The term “all applicable federal and state laws” shall mean and include, but not be limited to, the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, *et seq.* (“RESPA”) and regulations promulgated thereunder; regulations promulgated by the Office of the Comptroller of the Currency, Federal Home Loan Bank Board, Federal Housing Authority, Federal Department of Housing and Urban Development, the Veterans’ Administration, and the statutory and common law of the State of Illinois including, but not limited to, the Illinois Title Insurance Act, 215 ILCS 155/1 *et seq.*, the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.*, the Illinois Real Estate License Act of 2000, 225 ILCS 454/1-1 *et seq.*, and the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/1 *et seq.*

E. The “matters addressed” in this Consent Decree are (1) plaintiff’s claim that defendants participated in the unauthorized practice of law as alleged in the Complaint; and (2) defendants’ claim that plaintiff or its members disparaged defendants’ business and services as alleged in the Counterclaim. This Consent Decree does not address, and shall have no effect on, any claim or cause of action that accrues after the date hereof against another party, individually or collectively, under the common law or pursuant to any federal or state statute.

DECREE ON CONSENT

Now, therefore, it is hereby Ordered, Adjudged and Decreed as follows:

I. Undertakings of Plaintiff IRELA.

1. KSI and KST represent that neither defendant is currently participating in the unauthorized practice of law. Plaintiff IRELA, following investigation and discovery in this litigation, accepts such representation.

2. Plaintiff IRELA acknowledges that this Consent Decree fully satisfies all claims made by plaintiff in the Complaint regarding the alleged unauthorized practice of law by defendants.

3. Plaintiff IRELA acknowledges that some of its members have made statements regarding defendants KSI and KST, and plaintiff IRELA further acknowledges (without admitting) that KSI and KST have claimed such statements have been damaging to the business reputation of KSI and KST. Based upon the representation identified in Paragraph 1, page 4 hereof, and without admitting any liability, plaintiff IRELA will encourage its officers and members to work cooperatively with defendants KSI and KST in servicing their mutual clients.

4. Within 14 days following entry of this Consent Decree by the Court, Plaintiff IRELA agrees to send a written communication to its membership, in the form attached hereto as Exhibit A, which will advise its members of the satisfactory resolution of this lawsuit, advise them of this Consent Decree and its terms, and advise and encourage them to follow the terms of this Consent Decree in all respects.

II. Undertakings of Defendants KSI and KST.

1. Defendants KSI and KST agree that they shall not engage or participate in the practice of law or assist others in the unauthorized practice of law.

2. Defendants KSI and KST restate and reaffirm that their policies and practices regarding the use of independent attorneys in the purchase and sale of real estate by their clients are as follows:

- a. In all transactions, KSI strongly recommends that its clients, both buyers and sellers, retain an independent attorney to represent them. KSI and

KST recognize the right of every party to a real estate transaction to be represented by an independent attorney of his or her choice;

- b. It is the policy and practice of KSI and KST to comply with the requirements of *The Chicago Bar Association v. Quinlan and Tyson, Inc.*, 34 Ill. 2d 116, 214 N.E.2d 771 (1966);
 - c. Defendants KSI and KST prohibit their staff attorneys or a staff attorney of one of their affiliates from representing a seller, buyer or mortgagor in a real estate transaction or rendering legal advice to such parties; and
 - d. It is the policy and practice of KSI and KST to not engage or participate in any activities that constitute the practice of law.
3. Defendants KSI and KST acknowledge and agree that the certain February

9, 2000 internal KST electronic mail message entitled "Closing myth number 1," to the extent that message suggests that anyone other than a licensed attorney may perform legal services, was mistaken, and does not and did not at the time represent the policy or practice of defendants, and was not and will not be implemented. Within 14 days of the entry of this Consent Decree, defendants agree to distribute to each employee and agent a further electronic mail message, in the form attached hereto as Exhibit B, advising its employees and agents of the agreement stated in this Paragraph.

4. To the extent that the principles articulated in *Chicago Bar Association v. Quinlan and Tyson, Inc.*, 34 Ill. 2d 116, 214 N.E. 2d 771 (1966), remain the law in Illinois, defendants KSI and KST further agree as follows:

- a. As stated by the Illinois Supreme Court in *The Chicago Bar Association, et al., vs. Quinlan and Tyson*, KSI may complete the document referred to in that case as the preliminary or earnest money contract (hereinafter called "contract"), which is customarily in use in the community where KSI does business, by filling in any factual and business details in blanks provided therefor. KSI may add to or delete from such form only factual statements and business details, furnished by the principals therein, the addition or deletion of which is necessary to conform to the particular factual

situation. KSI may not prepare or complete any document necessary to carry out or implement the contract;

- b. KSI and KST may not give advice on any matter of law, either directly or indirectly, but KSI and KST should recommend that both the seller, and the buyer and/or mortgagor consult their respective lawyers as to all legal questions and for the preparation of all those documents which may be necessary to implement and carry out the contract;
- c. Where either the seller or the buyer desires to see a lawyer prior to the execution of a contract, KSI and KST will not attempt to dissuade such party from legal consultation;
- d. KSI and KST will not minimize the value of the lawyer's services, or participate or attempt to participate in the lawyer's fees;
- e. KSI and KST will not directly or indirectly employ a lawyer or pay for the services of a lawyer, or share commissions with such lawyer, to represent either the buyer, the seller and/or mortgagor;
- f. KSI and KST will advise the parties that the contract is binding on them;
- g. In the event that a seller or a buyer insists on proceeding without the use and benefit of an attorney, KSI and KST shall advise that person that KSI's and KST's services to that person are limited to those services permitted to be performed by brokers (or title companies, as the case may be) under the laws of Illinois; and
- h. KSI and KST agree that for purposes of real estate transactions involving the use of form real estate contracts, they shall utilize a basic Realtor® Association-approved form, with no modification which is inconsistent with the provisions of this Consent Decree.

The foregoing agreement shall remain in full force and effect for so long as the specific principle is not overruled by the Illinois Supreme Court, an Illinois Appellate Court or the Illinois General Assembly.

5. Defendants acknowledge that this Consent Decree fully satisfies all claims made by defendants in the Counterclaim.

III. Undertakings of All Parties.

1. All parties agree to comply with all applicable federal and state laws, as that term is defined in this Consent Decree.

2. All parties agree that, upon entry of this Consent Decree, they will jointly seek prompt dismissal of this action with prejudice and without costs (subject to the continuing jurisdiction of the Court to enforce the Consent Decree).

3. Effective upon the entry of this Consent Decree, Plaintiff IRELA hereby covenants not to assert against defendants KSI and KST in any court any claim alleged in the pleadings in this litigation (filed as of the date of this Consent Decree) relating to the unauthorized practice of law alleged to have occurred before the date of this Consent Decree.

4. Effective upon the entry of this Consent Decree, Defendants KSI and KST hereby covenant not to assert against plaintiff IRELA (including its officers and/or directors) in any court any claim alleged in the pleadings in this litigation (filed as of the date of this Consent Decree) relating to the claims pleaded by Defendants and alleged to have occurred before the date of this Consent Decree.

5. The parties shall promptly issue a joint press release in the form attached hereto as Exhibit C, announcing the resolution of this action. The parties further agree to limit any and all public statements made on their behalf regarding this matter, the underlying litigation, and claims made in the litigation, to statements substantially similar to the statements set forth in Exhibit C (unless otherwise agreed by all parties hereto).

6. Both parties agree that nothing contained in this Consent Decree is designed to or does affect the right of a party to a real estate transaction to act for himself or

herself in such transaction without the services of a broker or a licensed Illinois lawyer and it is not intended that this Consent Decree either modify or destroy such right.

7. Plaintiff represents to Defendants that Plaintiff has filed the Complaint, answered the Counterclaim and negotiated this settlement in good faith. Defendants represent to Plaintiff that Defendants have answered the Complaint, brought the Counterclaim and negotiated this settlement in good faith. The parties represent and agree that each will seek to abide by the terms hereof, and to enforce the terms hereby in good faith and without any attempt to evade the law or avoid the terms and provisions of this Consent Decree alone or in concert with any other person, entity, partner, joint venturer, contractor or independent contractor.

DISPUTE RESOLUTION

If there is a disagreement as to whether an obligation under this Consent Decree has been performed, the parties shall promptly confer and attempt in good faith to resolve the disagreement. If the parties are able to resolve that disagreement and that resolution requires further amendment to or clarification of this Consent Decree, the resolution shall be submitted in writing to the Court, signed by both parties, with a request that it be approved as an amendment to this Consent Decree. If the parties are unable to resolve their disagreement, both parties shall have the right to seek such appropriate relief from the Court as it deems necessary. The substantially prevailing party in any such litigation shall be entitled to its reasonable costs and attorneys' fees; provided, however, that nothing in the foregoing shall be construed to affect, limit or prohibit either party from seeking relief pursuant to Illinois Supreme Court Rule 137 in connection with any such litigation.

This provision shall apply solely to the obligations of the parties under this Consent Decree with respect to the matters addressed in this Consent Decree, as that term is defined herein. Nothing in this provision shall be deemed to apply to or affect the right of either party to assert claims against the other party or seek appropriate legal or other relief from that party with respect to matters other than the matters addressed in this Consent Decree, all such rights being expressly reserved.

TERM

This Consent Decree shall remain in full force and effect until the earlier of (i) such date as the parties hereto may agree, or (ii) December 31, 2010, whichever shall occur first, at which time this Consent Decree shall be of no further force and effect; provided, however, that nothing herein shall be construed to restrict any party (or their members or affiliates) from asserting any claim or initiating any litigation for activities that may occur after the date of this Consent Decree, including (without limitation) causes of action that are similar to those raised in the Complaint and Counterclaim; provided, further, that nothing herein shall be construed as consent from any party to participate in the complained-of activities after December 31, 2010.

GENERAL TERMS

Each of the undersigned declares and represents that he or she is competent to execute this instrument and that he or she is duly authorized, and has the full right, and authority (and, in the case of KST and KSI, the consent of their ownership), to execute this Consent Decree on behalf of the party or parties for whom he or she is signing. It is acknowledged that each party, with the assistance of competent counsel, has participated in the drafting of this Consent Decree, notwithstanding its entry by the Court. The parties agree that this Consent

Decree has been negotiated at arms' length by parties of equal bargaining power, each of whom was represented by competent counsel of its own choosing. None of the parties hereto shall be considered to be the drafter of this Consent Decree or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

RETENTION OF JURISDICTION

The Court shall retain jurisdiction of the subject matter and parties hereto for the purposes of enforcing and interpreting the terms this Consent Decree.

Joseph R. Marconi, Esq.
William J. Anaya, Esq.
Johnson & Bell Ltd.
55 East Monroe Street
Suite 4100
Chicago, IL 60603

Illinois Real Estate Lawyers Association

By: _____
Name: John G. O'Brien
Title: President

Stuart H. Wolf, Esq.
3345 N. Arlington Heights Road
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Arlington Heights, IL 60064

Counsel for Illinois Real Estate
Lawyers Association

J. Andrew Langan, Esq.
James J. Boland, Esq.
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200 East Randolph Drive
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Koenig & Strey, Inc.

By: _____
Name: Christopher J. Eigel
Title: President

Counsel for Koenig & Strey, Inc.
and Fort Dearborn Land Title Company
d/b/a Koenig & Strey Title Company

Fort Dearborn Land Title Company
d/b/a Koenig & Strey Title Company

By: _____
Name: Christopher J. Eigel
Title: Vice President

ENTER: June ____, 2001

By: _____
Circuit Judge

Exhibit A

The Illinois Real Estate Lawyers Association (IRELA) is pleased to announce that IRELA and the Koenig & Strey Defendants (Koenig & Strey/GMAC Real Estate and Ft. Dearborn Title) have reached a settlement in the litigation captioned: *The Illinois Real Estate Lawyers Association, an Illinois not-for-profit corporation v. Koenig & Strey, Inc. and Koenig & Strey Title Company, Inc.*, formerly pending in the Circuit Court of Cook County, Chancery Division, Case Number 00 CH 10063. The parties reached settlement on the unauthorized practice of law count brought by IRELA and the Counterclaim brought by Defendants. The terms of the settlement are incorporated into a Consent Decree entered by the Honorable Richard J. Billik, and are available on IRELA's web site (www.reallaw.org).

The parties also prepared a "Joint Press Release," a copy of which is attached for your review.

“Exhibit B”

We are pleased to announce that we and the Illinois Real Estate Lawyers Association (IRELA) have reached a settlement of our dispute. As both the settlement agreement and the following press release make clear, we are affirming our long-standing policy of recommending the use of attorneys in real estate transactions. We are extremely pleased to put this matter behind us and look forward to working with IRELA’s members in serving the real estate needs of our mutual clients.

Following is the mutual press release announcing the settlement:

Exhibit C

JOINT PRESS RELEASE

CONTACTS:

The Illinois Real Estate Lawyers Association
2340 S. Arlington Heights Road, Suite 400
Arlington Heights, Illinois 60005
Attention: Mr. John G. O' Brien
(847) 593-5100

Koenig & Strey GMAC Real Estate
3201 Old Glenview Road, Suite 100
Wilmette, IL 60091-2942
Attention: Mr. Christopher J. Eigel
(847) 853-5000

www.reallaw.org

www.ksgmac.com

The Illinois Real Estate Lawyers Association (“IRELA”) and Koenig & Strey GMAC Real Estate announced today that they had settled a lawsuit brought in the Circuit Court of Cook County by IRELA against Koenig & Strey GMAC and a Counterclaim asserted by Koenig & Strey GMAC against IRELA. The suit by IRELA claimed that Koenig & Strey GMAC had participated in the unauthorized practice of law in its real estate brokerage business and related title business. The Counterclaim by Koenig & Strey GMAC alleged that IRELA had disparaged Koenig & Strey GMAC’s business reputation. Without admitting liability, both sides have agreed to a Consent Decree, to be entered and enforced by the Circuit Court confirming that Koenig & Strey GMAC and its title affiliate may not engage in the unauthorized practice of law and that IRELA will encourage its members to work cooperatively with Koenig & Strey GMAC in serving their mutual clients.

The lawsuit was filed in July 2000 following an internal February 2000 Koenig & Strey e-mail suggesting that Koenig & Strey GMAC’s title company could perform certain closing activities without the need for an independent attorney. Koenig & Strey GMAC counterclaimed, on the alleged grounds that IRELA had falsely claimed that Koenig & Strey GMAC’s policy was to discourage use of attorneys in real estate transactions. Koenig & Strey GMAC has continuously denied that its policy is or has been to discourage the role of attorneys in real estate transactions. As part of the Consent Decree, Koenig & Strey GMAC confirmed that the internal e-mail did not reflect a policy to discourage the role of attorneys in real estate transactions, and no such policy has ever been implemented by Koenig & Strey GMAC.

Both parties praised Circuit Judge Richard J. Billik who assisted the parties in settling the matter without protracted litigation. John O’ Brien, an Arlington Heights lawyer and the President of the Illinois Real Estate Lawyers Association, said: “We really appreciate Judge Billik’s efforts. He helped bring the parties together.”

Christopher J. Eigel, President of Koenig & Strey GMAC Real Estate, agreed and stated:

“We are very pleased to put this matter behind us. It stemmed from a misunderstanding regarding our view of the role of independent attorneys in real estate transactions. We have always strongly encouraged all of our clients to use independent attorneys for real estate advice. We feel that this policy ensures a much smoother transaction for all parties. Entering into this Consent Decree allows us to reaffirm our long-standing policy and clear up any remaining confusion on the matter. We have worked closely with many of IRELA’s members for many years to provide excellent services to our mutual clients, and we look forward to continuing to do so in the future.”

As a result of this litigation, O’Brien was referred to in the popular press as the “Turf Warrior,” but, according to the association’s corporate attorney, Stuart Wolf of Arlington Heights, “It is not a description he necessarily deserves.” According to Wolf, “It is not ‘turf’ that is at stake. Lawyers are not at risk. Clients are at risk if they proceed to closings without independent lawyers actively representing their interests as sellers, buyers and borrowers.” Eigel does not disagree. “Often times lawyers are the best insurance we have at closings,” he said.

In the final analysis, both parties are satisfied with the formal resolution of their differences. “We are satisfied that Koenig & Strey GMAC is not now participating in the unauthorized practice of law. We take them at their word on the matter,” O’Brien said. Eigel too is satisfied that the acrimony has been resolved. “Both parties know the other’s position now, and both parties have everything to gain in respecting the lines drawn and the agreements made in resolving this litigation,” he said.

The Illinois Real Estate Lawyers Association is comprised of experienced attorneys dedicated to assisting individuals and businesses in connection with real estate transactions of all types. IRELA is an Illinois not-for-profit corporation, whose members are licensed Illinois attorneys. IRELA was represented in the litigation by Joseph R. Marconi and William J. Anaya of Johnson & Bell Ltd. and Stuart Wolf of Arlington Heights.

Koenig & Strey GMAC Real Estate, based in Wilmette, is a leading Realtor® serving the Chicago area with nearly forty years’ experience in real estate brokerage service. Today, Koenig & Strey GMAC has 13 branch office locations providing consumers with complete transaction services, including brokerage, mortgage, insurance, title, and a variety of after-market products and services relating to homeownership. Koenig & Strey GMAC Real Estate was represented in the litigation by J. Andrew Langan of Kirkland & Ellis.

The terms of the Consent Decree are available on IRELA’s web site (www.reallaw.org).