

-----COPY of my prior correspondence sent to you and to ZipRealty Inc.-----

FYI. I have attached the following copy of the email replies that I have sent to the ZipRealty Legal Counsel, as they had requested, based on their malicious and unfounded legal threats and their attempts for "restraint of trade" on working with my own prior clients, and their past commission non-payment of several thousand dollars still owed to me for my closed previously pending transactions when I left them as a Realtor(R) and went to RE/MAX Eastside Brokers, Inc.

Sincerely,

David J. Lubocki, MS, JD
REALTOR (R), Licensed in Washington
Residential Real Estate Agent
Your "key" to outstanding results!
RE/MAX Eastside Brokers, Inc.
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-----Copy of my previous response letters to the ZipRealty "Cease & Desist Demand Letter" sent to me-----

Dear Samantha Harnett, Esq.:

It is a very questionable and unpleasant situation, as a WA Licensed Realtor & Real Estate Agent that is now working with RE/MAX Eastside Brokers Inc, in Bellevue, WA, that you and a large publicly traded corporation must resort to threatening letters and threaten litigation when my past clients would rather continue to work with me as their agent, rather than with a ZipRealty blindly assigned Agent or Broker that they do not know or would prefer to not work with.

It is times like this that I am glad that I am still working hard as a professional Realtor(R) helping my past and current real estate clients, rather than trying to only intimidate and to threaten to litigate and to be adversarial to all other involved parties as an attorney, which is also why I am glad that I do not practice law in California or Washington, even if I did graduate from a major accredited California Law School and have already taken both of their Bar exams.

It seem like you and ZipRealty are also trying to create an unlawful "restraint of trade" and are trying to interfere with my ability to earn a future living and to get any future referrals as a professional licensed Realtor(R). I do not think that you have the legal right to interfere with my past clients' desires to continue to work with me, or for them or for their referred clients to not be able to continue to get my superior real estate service and knowledge as a Realtor(R) when working with me. They should have the legal freedom of choice to not work with ZipRealty or their other agents or brokers if they do not want to. They are living people with minds, and have the ability to make their own agent choices, and are not just your "property".

I have still encouraged my past ZipRealty clients that have pending pre-sale transactions on new homes to stay with ZipRealty and their new assigned agent or broker, since ZipRealty is still shown as their selling office broker on their pending contracts, so that they do not lose their earnest money or

breach their contract by changing agents and brokers at this time, even if they do not want to work with ZipRealty or new assigned agents or brokers. They all still feel that I was the procuring cause of their still pending purchase and sale agreement, and that it was not due to ZipRealty or any other assigned ZipRealty agent. Some of these pending deals have already even paid the full selling office commission to ZipRealty, even if the new home purchase has not yet closed and been occupied.

I have also not contacted any of my past ZipRealty blindly registered potential clients that had just been randomly assigned to me in the past unless I have personally already worked with them before, and they had expressed their own desire to continue working with me in the future as their authorized agent, regardless of the current real estate brokerage company that I was with.

None of my current or past clients were ever paid or offered a significant "referral fee" for just referring other clients to use me as their agent, rather than working with a current or future ZipRealty agent, or any other agent or company. Most of my past ZipRealty clients have all expressed their own desire to continue working with me on their current and future real estate transactions, and would prefer to refer new clients to me, and not to ZipRealty. They should be able to refer any other clients to me, based on my past superior real estate agent service and abilities and accessibility and patience in working with them in the past as my clients, and not based on any falsely alleged payments or rebates for just their referrals of other future clients, or due to any terms that you have placed in your "alleged" legally enforceable employment agreement.

Most of my past actual ZipRealty clients purchasing or selling homes valued at over \$500K were actually referred and registered by me with ZipRealty when they wanted to use me as their agent, while I was working for ZipRealty as one of their local agents, rather than the other way around. Even though ZipRealty assigned clients have contributed a very small portion of my total paid past commission income, I still gave ZipRealty over 60% of all of the net paid real estate commissions on my own clients and on my own referrals while I worked with them, while I still received less than 40% of the net commission, which was only a fraction of the typical commissions that I could have made with another broker, while I was still their full time agent, for all of my hard professional work and for mostly my own self-referred clients, and for none of my related expenses, due to their original misrepresentation that I would be receiving a large monthly number of "good" future registered client leads, and paid for all the "additional" closed and funded transactions that would result from me working for ZipRealty and "their" registered new clients. It is unconscionable and totally and professionally unfair that you still insist that you can keep both the substantial commissions that you would have already been paid for your share, plus that you are also still keeping my portion of collected commissions that would have been paid to me if I had only left you only a few weeks later than I did. I had discussed my desire to leave ZipRealty with my Broker, since I was not getting the additional "good" leads or additional income that I had expected based on your original claims and representations, and I immediately emailed you my written resignation based on the recommendation and advise of your local broker, who knew that I still had over \$1 Mil in pending transactions still in escrow that would close within the next several days. He never suggested that I should wait another week so that there would be no problem in my collection my several thousand dollars of commission when my pending deals in escrow actually closed and were fully funded and paid to my broker.

As far as I was concerned, ZipRealty had also already breached the terms of their own "alleged" sham employment agreement, and it may have already made its terms unenforceable, since in addition to never even paying me any salary

or expenses or even a minimum wage as your "employee", while I was still working for you in March, 2005, and had closed over \$2 Mil worth of my own referred client (and family member) home sales and purchases, I was still only paid at a 40% of net commission level, rather than at the stated 60% level in your own agreement on total commissions over \$15K that you had received during that month.

All of my own past clients had also signed a buyers agency agreement or a listing agreement with me, plus had signed purchase and sale agreement contracts that specifically named me as their assigned agent to represent them, in addition to my past real estate brokerage company. They have told me that they and the other parties in their transactions would prefer to continue working with me as their agent, and have no desire to work with ZipRealty or their blindly assigned new agents or brokers. My past clients would be happy to provide letters or affidavits that I did not try to unduly influence them to take their current or future business away from ZipRealty or their agents, and that it was by their own choice and preference to continue working with me in the future rather than ZipRealty of their other agents.

It appears that you and ZipRealty are now trying to claim that you have a legal right to enforce a possibly unlawful "restraint of trade" on me and my current new real estate broker and my own past and current clients, under your questionable terms of your alleged sham of an employment agreement, that had to be signed by me, and could not be modified or changed, if I wanted to go to work for you as a licensed Realtor and real estate agent. This agreement was also signed and executed while you were still an independently owned company, and not a publicly traded large corporation on the stock exchange.

All of my past clients have stated their own desire and preference to continue working with me as their representative and real estate agent, and I question why you and ZipRealty think that you have the legal right to try to interfere with my past contractual relationships and my client privity, in addition to still trying to keep my last month of over \$9K of my past earned commissions that you should still pay to me, even if you have sent your latest "Cease & Desist Demand" Letter to me any my current real estate broker.

I have also attached my past letters requesting that you should still pay me for my past commissions that I had earned on pending sales that closed or that you had received full commission payment within a few weeks after I had left you, so that I could still work as a WA licensed real estate agent for another local major real estate brokerage company, that is independently owned and operated, unlike ZipRealty that still claims that their commissioned agents are actually their employees. I am sorry that you feel that you may still want to take further legal action to resolve this situation.

Since you have now kept all of my past last month commissions, in addition to your own share, I also wonder if you have properly filed and paid all taxes and B & O taxes and fees related to all real estate commissions that you have be paid and kept for past agents in WA state, in addition to your attempts for demanded "restraint of trade and commerce" plus your totally unfair and possible unlawful non-payment policies for my past earned agent commissions, and your very poor labor relation practices towards your past alleged "employees" that are state licensed professional Realtors(R).

If licensed Realtors(R) fully understood all the current and future limitations that you may try to place on them while they work as agents for you, as well as after they may go to work for another real estate brokerage company when they try to still be of continued help to their past clients, I wonder how many would even want to work for you.

I will also be forwarding this letter and all related information, plus copies

of your legal threats and other demands made in your "Cease & Desist Demand" letter to other interested agencies and parties, which may include, but are not limited to, the National Association of Realtors, the WA State Labor Relations Department, the FTC, and WA State Real Estate licensing board of directors, which I am prepared to continue to fully support and pursue as allowed by law.

Sincerely,

David J. Lubocki, MS, JD
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Your "key" to outstanding results!
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Dear Simantha Harnett, Esq. (ZipRealty Legal Counsel):

As requested, and as a professional courtesy, I will reply to each of your demands, even though I greatly resent your legal threats of unfounded and malicious litigation and future legal actions against me.

It is still ZipRealty that was already in breach of your alleged employment agreement with me before I left, and that ZipRealty still owes me over several thousand dollars for my past pending sales commissions that were closed or that they had received full payments on within 2 weeks after I sent in my resignation email.

My immediate resignation email that I had sent to ZipRealty was also based on the bad and biased advise that had been previously given to me by your local manager and employee that had been my past local broker and supervisor at that time. If I had been told to give you 2 weeks notice at that time, which is customary in most actual "employment" situations, you would have still been required to pay me for my pending transactions that still closed or that you had received full payment within these 2 weeks following my resignation notification email. They still also owe me for the 60% commission level that I had earned in March, 2005 for their gross commission that they had received of over \$15K, rather than the 40% of commission that I had only been paid, that was already in breach and violation of the stated terms in your "alleged" employment agreement.

I had hoped that ZipRealty would do the right and fair thing by still paying me for my past earned commissions on their now closed or fully paid sales commissions that I should have been paid, for my hard professional work and efforts that I provided to them and my clients while I had been working for them. It is a real waste of both of our valuable time, as busy professionals, to pursue this unfounded and maliciously alleged matter any further, and ZipRealty should just authorize my requested payment of my past commissions that I had earned as the procuring cause of my previously identified transactions, rather than keeping your share of the commission as well as mine.

I have also attached a copy of my following past correspondence and emails between me and one of your local Agents, Iris Flaxman, that I had tried to help out as a co-agent while I was still working as an agent for ZipRealty.

I really deserve better treatment than this for all the money and effort that I have given to ZipRealty on the transactions that I had already closed for my own prior clients and family, and for just trying to help other ZipRealty agents, at their request, and my past customers that had wanted me to continue to be their agent after already actually working with me, even if I was no longer an agent at ZipRealty, and that I have not tried to solicit or offer illegal rebates for their business or other client referrals of "ZipRealty" clients, even if you seem to interpret that is this is what they may have possibly requested from me.

This just shows me how petty ZipRealty and some of your agents can be. Let me remind you, since you are an attorney, that legally disparaging or defamatory statements need to be based on statements that are known to be not true, and do not apply when my statements are actually factual and true.

Regarding your list of your stated demands in your last letter sent to me and my current broker:

- 1) I no longer have any ZipRealty Company Property in my possession to cease and desist using.
- 2) I no longer have any ZipRealty Company Property in my possession to return to ZipRealty.
- 3) I am not in contact with any past ZipRealty clients that have not first requested my help or contacted me.
- 4) I no longer have access to any of the ZipRealty leads, and none were improperly misappropriated by me.
- 5) There are no new interests in ZipRealty commissions generated for new transactions involving any past ZipRealty clients that had not already been identified by me in prior communications as my previously pending transactions while still at ZipRealty, and that had actually been referred to me and registered by me to ZipRealty, as my real estate broker at the time, rather than the other way around.
- 6) Since I had no further access to the ZipRealty ZAP or records or databases since when I left ZipRealty, and I therefore can not Cease and Desist from this non-applicable and unfounded demand.
- 7) I no longer have any ZipRealty Company Property or information in my possession, to be identified.
- 8) I am not, and have not, made any untrue and disparaging and/or defamatory statements about ZipRealty, its employees, and/or its Officers and Directors, and I therefore can not Cease and Desist from this non-applicable and unfounded demand.
- 9) I have not disclosed or misappropriated any of ZipRealty's confidential and proprietary information, and I therefore can not Refrain from this non-applicable and unfounded demand.

I hope that this matter can quickly be resolved to our mutual satisfaction.

Sincerely,

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