

737 96-1

737 96-1

No. 737961

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I**

MICHAEL NHYE, LACY JOLIN, Husband and Wife and their
Marital Community composed thereof, *Pro Se*

Appellants,

vs.

CALIBRATE PROPERTY MANAGEMENT, LLC,
a Delaware Corporation doing business in Washington

Respondent.

**ON APPEALS FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON – KING COUNTY**

1. The Hon. Comm. TANYA THORP – 18th, 06. 2015 A.D.
2. The Hon. Comm. VERONICA GALVIN – 25th, 06.2015 A.D.

Cause No. 15-2-13447-7 KNT

APPELLANTS' OPENING BRIEF

2016 MAY 19 AM 11:16
COURT OF APPEALS DIV 1
STATE OF WASHINGTON

Michael Nhye; *Pro Se*
Lacy Jolin; *Pro Se*
P.O. Box 3522
Federal Way, WA 98063-3522

TABLE OF CONTENTS:

I. INTRODUCTION 1

II. ASSIGNMENT OF ERROR 5

III. STATEMENT OF THE CASE 9

A. Appellants Nhye And Jolin Were Singled-Out And Targeted For Retaliation For Simply Filing Numerous Complaint Against Respondent Calibrate Property Management, LLC (Marina Club Apartments), With The Code Enforcement Department Of The City Of Des Moines, A Governmental Entity, For The Respondent’s Repeated Acts Of Violating City Ordinances To The Detriment Of The General Public. Both Appellants Nhye And Jolin Were At All Times In Good Standing Of Their Residential Lease Agreement And In Full Compliance With The Landlord-Tenant Act.
..... 9

B. As Part Of The Targeted Campaign Of Retaliation In Which Appellants Nhye And Jolin’s Were Singled-Out And Punished For Filing Numerous Complaints With The City Of Des Moines, Washington (Code Enforcement Department), Respondent Calibrate Property Management, LLC, Acting Through Its Marina Club Apartments Began Discriminating Against Them On The Bases Of Race/National Origin, Familial Status, Rental Conditions, Privileges, Or Terms, Etc.; Restricting Their Tenancy To 6-Months While Other Tenants Were Given The Choice Of Choosing A Lease Term Of Their Choice.
..... 10

C. Appellants Nhye And Jolin’s Lease Expired And They Were Given No Written Notice Of Rent Increase As Is Required By Law. Instead, Appellant Nhye Alone Was Given An Offer To Renew His Residential Lease

Agreement For A Limited 6-Months While Other Tenants Were Given 9-Months To 12-Months Offers To Resign Their Residential Lease Agreement If They So Desired. Appellant Jolin On The Other Hand Was Completely Excluded. She Was Made No Offer, Neither Was She Given A Written Notice Of Rent Increase. Appellants Nhye And Jolin Owed No Back Rent. In Fact, They Had Always Paid Their Rent On Time. Appellants Nhye And Jolin Paid Their Rent And Utilities In Full In The Amount Of \$1,245.00 On 5th, 06.2015 A.D., Only For Their Rent And Utilities Payment To Be Accepted By The Management And Then Later Returned To Them Via Certified Mail By The U.S. Postal Service.

..... 14

IV. SUMMARY TO THE ARGUMENT.....17

V. ARGUMENT19

A. The Standard Of Review Is De Novo19

B. An Offer To Re-sign A Residential Lease Agreement Is In No Way A Substitute For A Statutory Written Notice Of Rent Increase19

C. The Superior Court Of Washington – King County, Erring In Its Finding That Appellants Nhye And Jolin Ought To Have Been Evicted From Their Apartment, Created A Statutory Claim For Which Relief Can Be Granted21

D. The Superior Court Of Washington – King County, Erred When It Insisted That Appellant Nhye Be Represented By An Attorney Instead Of Himself In A Civil Trial22

E. Inadequate Representation By The Attorney From The Housing Justice Project Assigned To Represent Appellant

Nhye, Attorney Michelle Hunter, Who Lied To, Coerced,
And Deceived The Appellant Into Agreeing To, And
Signing An Agreement To Have Him And His Family Be
Evicted From Their Apartment24

F. The Court of Appeals of the State of Washington –
Division I, Must Reverse The Superior Court Of
Washington – King County Decision, Based Upon The
Following Cases Provided Below, But At The Same
Time Not Limit Itself To These Cases29

VI. CONCLUSION32

TABLE OF AUTHORITIES:

<u>Cases:</u>	<u>Page(s):</u>
<u>Rainier View Court Homeowners Ass'n, Inc. v. Zenker,</u> 157 Wn.App.710, 719, 238 P.3d 1217 (2010)	19
<u>Foisy v. Wyman,</u> 83 Wn.2d 22, 32-33, 515 P.2d 160 (1973)	29
<u>International Indus. Inc. v. United Mortgage Co.,</u> 96 Nev. 150, 606 P2d 163 (1980)(citing <i>Thrifty Supply Co. v. Deverian Builders</i> , 3 Wn. App. 425, 475 P.2d 905 (1970)(payment established by receipt of funds by creditor))	29
<u>Housing Authority v. Newbigging,</u> 105 Wn. App. 178, 187, 19 P.3d 1081, 1086, (2001)	30
<u>Hwang v. McMahill,</u> 103 Wn. App. 945, 953, 15 P.3d 172, 177 (2001)	30
<u>Wilson v. Daniels,</u> 31 Wn.2d 633, 198 P.2d 496 (1948)	30
<u>Wilson v. Daniels, supra</u>	30
<u>Byrkett v. Gardner,</u> 35 Wash. 668, 77 P. 1048 (1904)	31
 <u>Statutes:</u>	
42 USC 3601-3619	4, 8, 12, 13, 31
RCW 19.86	16, 18, 21
RCW 49.60.030	4, 7, 8, 12, 13, 31
RCW 59.12.030(5)	30

RCW 59.18.130(5)	30
RCW 59.18.140	14, 20
RCW 59.18.240	4, 6, 7, 10, 21, 31
RCW 59.18.250	4, 6, 7, 10, 21, 31
KCC12.20.040	4, 8, 31
Des Moines Municipal Code 7.08.020	3, 6

Rules:

Code of Judicial Conduct’s Canons 1, 2	28
RPC 8.4(c)(d)(k)(m)	28

I. INTRODUCTION:

Appellants Michael Nhye and Lacy Jolin are the Defendants in this wrongful eviction case in violation of Federal, State, and County statutes which were filed in the Superior Court of the State of Washington for King County against them.

The Appellants' Opening Brief is premised upon acts of retaliation and discrimination perpetuated against them by the Respondent, acting through its Marina Club Apartments, which led to them being wrongfully evicted from their apartment... they and their minor children. On 18th, 06.2015 A.D., the Superior Court of Washington for King County, the Hon. Commissioner Tanya Thorpe presiding, issued a Writ of Restitution to that effect. Separately on 25th, 06.2015 A.D., the Superior Court of Washington for King County, the Hon. Commissioner Veronica Galvin presiding, signed an order denying Appellants Nhye and Jolin's Motion and Declaration to Vacate Judgment and to Stay Enforcement of Writ of Restitution.

From 6th, 04.2013 A.D., until their unjust and very unfortunate eviction from their apartment on or about 07.2015 A.D., Appellants Nhye and Jolin had resided at the Marina Club Apartments in Des Moines,

Washington, which is managed by the Respondent.

Appellants Nhye and Jolin had resided at said apartment complex for over two years, while peacefully co-existing with other tenants of various races, religious backgrounds, etc. As a direct result of their good tenancy, the Appellants had no complaints ever made against them to the Property Management by any other tenant. So was the extent of the cordial and peaceful co-existence of the Appellants.

All of the aforementioned are to say the least. Appellants Nhye and Jolin's tenancy at the Marina Club Apartments did not stop with living peacefully with other tenants. Instead, their tenancy went as far as working with the City of Des Moines, Washington (Ms. Nancy Uhrich) to put an end to continuous violations of the City's ordinances. Others include working with the Des Moines Police Department to stop a crime in progress on Father's Day 15th, 06.2015 A.D., in which the burglar was apprehended and valuables which included cash, Social Security Cards, paychecks, and other valuable items were recovered on the scene of the crime.

Having said all of the above, Appellants Nhye and Jolin's Opening Brief is premised upon acts of retaliation and discrimination perpetuated

against them by the Respondent, acting through its Marina Club Apartments; something which led to their eventual eviction... them and their minor children:

Firstly, the Respondent Calibrate Property Management, LLC, acting through its Marina Club Apartments, began retaliating and discriminating against Appellants Nhye and Jolin for simply being victims of a robbery in which one of the Appellants was robbed of his wallet and mobile phone, and in which one of Appellants was bitten, pepper sprayed, and nearly stabbed by one of the thieves while attempting to escape the crime scene. Because the thieves were of the Black race and because one of the Appellants (the main victim of the crime is also Black), the Respondent acting through its Marina Club Apartments began the process of cleansing the apartment complex of some of its tenants on the basis of race, including Appellants Nhye and Jolin and their minor children.

Secondly, the Respondent Calibrate Property Management, LLC, acting through its Marina Club Apartments, began retaliating against Appellants Nhye and Jolin for filing various complaints with the Code Enforcement Officer of the City of Des Moines, Ms. Uhrich, for the Respondent's repeated violations of the **Des Moines Municipal Code 7.08.020**, and in which the Respondent (Marina Club Apartments) was

repeatedly punished. The Appellants' only wrongdoing was of them speaking to a civil and/or governmental authority about the Respondent (Marina Club Apartments). *See RCW 59.18.240. See also RCW 59.18.250.*

Thirdly, the Respondent Calibrate Property Management, LLC, acting through its Marina Club Apartments, began retaliating and discriminating against Appellants Nhye and Jolin, by increasing their rent at the expiration of their Residential Lease Agreement but without giving them proper written Notice of Rent Increase as is required by law; discriminating against the Appellants by limiting them to a 6-months lease term while giving other tenants unlimited lease tenures; discriminating against the Appellants by charging them more money for rent and utilities while charging other tenants much less; discriminating against the Appellants because of the presence of minor children in the apartment among other acts of discriminations. *See 42 USC 3601-3619; RCW 49.60.030; KCC 12.20.040.*

II. ASSIGNMENT OF ERROR:

1. The trial Court erred in insisting that the only Appellant (Appellant Nhye) present take leave of the courtroom to seek the representation of the Housing Justice Project, whose staff attorney, Ms. Michelle Hunter, was assigned to the Appellant's case and did a very poor job of representing the Appellant to the point of ensuring an eviction. Ms. Hunter even lied to the Appellant in order to convince him to sign the agreement that led to an eviction. It should be made very clear that the Appellant had not asked the trial Court for any assistance whatsoever but that such assistance was imposed upon the Appellant leading to an eviction.

2. The trial Court erred when the Hon. Commissioner Tanya Thorpe, on 18th, 06.2015 A.D., deliberately chose for unknown reason, not to record the proceedings, even though the audio technology needed is already adequately in place in every courtroom in the State of Washington.

3. The trial Court erred when the Hon. Commissioner Tanya Thorpe, on 18th, 06.2015 A.D., signed an order evicting the Appellant without first inviting the Appellant back into the courtroom, and speaking to the Appellant to ensure that the Appellant entered the agreement willingly. Unfortunately, the Court Commissioner did not. In the end, it turned out that the agreement was obtained by virtue of duress, lies, and among other

things.

4. The trial Court erred when the Hon. Commissioner Veronica Galvin, on 25th, 06.2015 A.D., denied the Appellants' Motion and Declaration to Vacate Judgment and to Stay Enforcement of Writ of Restitution, even though the trial Court was told in open Court that the agreement the Appellant had signed on 18th, 06.2015 A.D., was obtained via duress/fearing mongering/lies; yet the Court Commissioner could care less.

5. Whether or not the two Court Commissioners who presided over the Appellants' case took the time to read the Appellants' pleading remains to be known. Assuming they did, the trial Court erred in ignoring the fact that Appellants Nhye and Jolin were being retaliated against for filing numerous complaints against the Respondents with the City of Des Moines, Washington, a civil and/or governmental authority, for their repeated violation of the **Des Moines Municipal Code (DMMC 7)**; something which led to the Respondents being fined numerous times. Even though they raised the issue in their Answer and Affirmative Defenses, the Appellants were ignored by the trial Court. *See RCW 59.18.240. See also RCW 59.18.250.*

6. Whether or not the two Court Commissioners who presided over

Appellants Nhye and Jolin case took the time to read the Appellants' pleading remains to be known. Assuming they did, the trial Court erred in ignoring the fact that the Appellants were being retaliated against in violation of the Landlord-Tenant Act, even though they raised the issue in their Answer and Affirmative Defenses, and in their Motion and Declaration to Vacate Judgment and to Stay Enforcement of Writ of Restitution. These acts took place in clear violation of **RCW 59.18.240; and RCW 59.18.250.**

7. Whether or not the two Court Commissioners who presided over Appellants Nhye and Jolin case took the time to read the Appellants' pleading remains to be known. Assuming they did, the trial Court erred in ignoring the fact that the Appellants' Human Rights were deliberately being violated and that they were being discriminated against, even though they raised the issue in their Answer and Affirmative Defenses. These acts repeatedly took place in violation of **RCW 49.60.030.**

8. Whether or not the two Court Commissioners who presided over Appellants Nhye and Jolin case took the time to read the Appellants' pleading remains to be known. Assuming they did, the trial Court erred in ignoring the fact that the Appellants were being retaliated and

discriminated against, even though they raised the issue in their Answer and Affirmative Defenses. These acts repeatedly took place in violation of **KCC 12.20.040 – Unfair Housing Practices.**

9. Whether or not the two Court Commissioners who presided over Appellants Nhye and Jolin case took the time to read the Appellants' pleading remains to be known. Assuming they did, the trial Court erred in ignoring the fact that the Appellants were being retaliated and discriminated against, even though they raised the issue in their Answer and Affirmative Defenses. These acts repeatedly took place in violation of **42 U.S.C. 3601-3619. See also RCW 49.60.030.**

10. All of the actions spoken of against the trial Court compromises the independence and integrity of the Court.

11. Furthermore, all of the actions spoken of against the Respondent Calibrate Property Management, LLC (Marina Club Apartments) one way or the other violates many Federal, State, and County statutes, and established case laws.

III. STATEMENT OF THE CASE:

In response to Respondent Calibrate Property Management, LLC being granted a Writ of Restitution against them, Appellants Nhye and Jolin went back to the trial Court asking it to reconsider the matter when they filed a Motion and Declaration to Vacate Judgment and to Stay Enforcement of Writ of Restitution. That attempt failed with hardly any due process of law.

A. Appellants Nhye And Jolin Were Singled-Out And Targeted For Retaliation For Simply Filing Numerous Complaint Against Respondent Calibrate Property Management, LLC (Marina Club Apartments), With The Code Enforcement Department Of The City Of Des Moines, A Governmental Entity, For The Respondent's Repeated Acts Of Violating City Ordinances To The Detriment Of The General Public. Both Appellants Nhye And Jolin Were At All Times In Good Standing Of Their Residential Lease Agreement And In Full Compliance With The Landlord-Tenant Act.

1. Beginning 29th, 12.2014 A.D., long before Respondent Calibrate Property Management, LLC would single out and begin to target Appellants Nhye and Jolin for retaliation and discrimination, the Appellants had been in regular contact with Ms. Nancy Uhrich, Code Enforcement Officer of the City of Des Moines, Washington. These contacts had to do solely with Respondent Calibrate Property Management, LLC repeated violations of the City's codes spanning well

over 6-months.

2. These contacts would come to an end on 30th, 06.2015 A.D. (on the Appellants' own accord) but by this time, the City to the best of their knowledge had fined Marina Club Apartments numerous times.

3. Even prior to establishing contacts with Ms. Uhrich, Appellants Nhye and Jolin had at all times been in good standing of their Residential Lease Agreement; never having to be given notice for any lease terms violation, or made to pay a late fee among other things.

4. Soon though, Respondent Calibrate Property Management, LLC. (Marina Club Apartments) would realize that the individuals supplying evidences in the form of photographic images to the Code Enforcement Department of the City of Des Moines, Washington, were none other than Appellants Nhye and Jolin. It would not be long and Respondent Calibrate Property Management, LLC (Marina Club Apartments) would begin instituting various acts of retaliations in and of itself, and discriminations against Appellants Nhye and Jolin in blatant violation of applicable State laws. *See RCW 59.18.240; RCW 59.18.250. See also Clerk's Papers Pgs. 24 – 40; Pgs. 56 – 69; and Pgs. 71 – 71.*

B. As Part Of The Targeted Campaign Of Retaliation In Which Appellants Nhye And Jolin's Were Singled-Out And Punished For Filing Numerous Complaints With The City Of Des Moines, Washington (Code

. . .

Enforcement Department), Respondent Calibrate Property Management, LLC, Acting Through Its Marina Club Apartments Began Discriminating Against Them On The Bases Of Race/National Origin, Familial Status, Rental Conditions, Privileges, Or Terms, Etc.; Restricting Their Tenancy To 6-Months While Other Tenants Were Given The Choice Of Choosing The Lease Term Of Their Choice.

1. According to many reliable sources having to be people primarily involved with the Landlord-Tenant sector of business, and those who found themselves victims of the aforementioned sector, standing up for one's rights hardly ever comes without a very difficult price to pay. And depending on which side of the fence one finds themselves can mean either mean being allowed shorter lease terms, or the termination of tenancy with/without eviction among other actions.

2. So was the position to which Appellants Nhye and Jolin found themselves when they did exactly that... standing up for their rights under the law.

3. Appellant Nhye being Black of West African origin, and the victim of a robbery and assaults in which his wallet and mobile phone were stolen, and in which he was bitten, pepper-sprayed, and nearly stabbed with a knife by thieves who were also Black, became the victim of discriminatory practices. According to Ms. Melissa Leon, a former Property Manager of the Marina Club Apartments told both Appellants

Nhye and Jolin on the day of the crime (13th, 12.2014 A.D.) that there was a need of cleaning up the apartment complex of undesirable as they did to the Bay Club Apartments which is/was managed by Respondent Calibrate Property Management, LLC. Sometime later, Black tenants (including Appellant Nhye and family) became the target of rental denials, evictions, etc., in direct violation of the U.S. Fair Housing Act. **See Title VIII of the Civil Rights Act of 1968, as codified at 42 U.S.C. 3601-3619; RCW 49.60.030. See also Clerk's Papers Pgs. 24 – 40; Pgs. 56 – 69; and Pgs. 71 – 71.** Appellants Nhye and Jolin had complained for months about the very situation that would lead to Appellant Nhye's robbery, and assaults, but was always ignored by the Respondent leading to a crime taking place which could have been fatal.

4. Respondent Calibrate Property Management, LLC. (Marina Club Apartments) as a direct results of the Appellant's lawful actions began to discriminate against them on the basis of their familial status. Because the Appellants were parents with minor children, the Respondents charged them more for the cost of utilities (\$95.00) while charging families without minor children less (\$85.00). This unlawful practice with regards to conditions, privileges, and terms would go on for months in direct

violation of the U.S. Fair Housing Act. ***See Title VIII of the Civil Rights Act of 1968, as codified at 42 U.S.C. 3601-3619; RCW 49.60.030. See also Clerk's Papers Pgs. 24 – 40; Pgs. 56 – 69; and Pgs. 71 – 71.***

5. As if the \$1,245.00 in rent and utilities (water, sewer, garbage) which Appellants Nhye and Jolin paid on a monthly basis was not already reasonably enough for the roughly 1000ft apartment they occupied, Respondent Calibrate Property Management, LLC. (Marina Club Apartments) increased the rent and utilities of the Appellants without giving them the required written Notice of Rent Increase. To make matter even worse, Appellants Nhye and Jolin were made to pay a different rental and utilities rates totaling nearly \$1,500.00, while other tenants (particularly non-Black tenants) were made to pay lessor amounts for rent and utilities. These tenants were also allowed to renegotiate their rental and utilities rates... privileges Appellants Nhye and Jolin were not given; example being Robert and Raquel Sernett who are Asian and Caucasian respectively, and who were given favorable conditions, privilege, and terms solely based on their racial background, etc. ***See Title VIII of the Civil Rights Act of 1968, as codified at 42 U.S.C. 3601-3619; RCW 49.60.030. See also Clerk's Papers Pgs. 24 – 40; Pgs. 56 – 69; and Pgs. 71 – 71.***

C. **Appellants Nhye And Jolin's Lease Expired And They Were Given No Written Notice Of Rent Increase As Is Required By Law. Instead, Appellant Nhye Alone Was Given An Offer To Renew His Residential Lease Agreement For A Limited 6-Months While Other Tenants Were Given 9-Months To 12-Months Offers To Resign Their Residential Lease Agreement If They So Desired. Appellant Jolin On The Other Hand Was Completely Excluded. She Was Made No Offer, Neither Was She Given A Written Notice Of Rent Increase. Appellants Nhye And Jolin Owed No Back Rent. In Fact, They Had Always Paid Their Rent On Time. Appellants Nhye And Jolin Paid Their Rent And Utilities In Full In The Amount Of \$1,245.00 On 5th, 06.2015 A.D., Only For Their Rent And Utilities Payment To Be Accepted By The Management And Then Later Returned To Them Via Certified Mail By The U.S. Postal Service.**

1. Appellants Nhye and Jolin had peacefully and law-abidingly resided at the Marina Club Apartments, managed by Respondent Calibrate Property Management, LLC. Their tenancy there began about in mid-2013 A.D., until their eviction a little over two years later.

2. Appellants Nhye and Jolin's Residential Lease Agreement was set to expire come 04.2015 A.D., and that they were anticipating re-signing for another 12-months lease term. What they got instead was a rent increase of roughly 20% without any written Notice of Rent Increase pursuant to **RCW 59.18.140. See also Clerk's Papers Pgs. 24 – 40; Pgs. 56 – 69; and Pgs. 71 – 71.** The offer to lock in a lease/rental rate for 6-months only was made to Appellant Nhye alone

and totally excluded Appellant Jolin even though she was one of the two original signatories of the Residential Lease Agreement dating back to roughly 2013 A.D.

3. Every month after refusing to accept the offer in which they were restricted 6-months only lease privileges being imposed upon them, Appellants Nhye and Jolin began receiving various notice to pay money that they did not legally owe to the Property Management. Subsequently, their payment of \$1,245.00 paid to cover the cost of their rent and utilities was accepted by the Property Management on 5th, 06.2015 A.D., only to be sent back to them via Certified Mail by the U.S. Postal Service. It would not be long from that point when they received Court papers commencing the legal process to evict them.

4. Appellants Nhye and Jolin simply insisted on their legal rights to be given written before the increase of their rental rate. Said insistence would prove futile as the Respondent Calibrate Property Management, LLC. acting through its Marina Club Apartments used that as a pretense of evicting them and their minor children from their apartment through a flawed Court process.

5. Respondent Calibrate Property Management, LLC. acting through

its Marina Club Apartments, knowingly and willfully acted in bad faith, and such bad faith actions evidently violated the State of Washington's Consumer Protection Act. *See RCW 1986 – Unfair Business Practices.*

IV. SUMMARY TO THE ARGUMENT:

1. Attorneys for Respondent Calibrate Property Management, LLC. have often maintained that Appellant Nhye and Jolin were lawfully evicted from their apartment because Appellant Nhye, in the absence of Appellant Jolin, “willfully” signed an agreement that paved the way for their eventual eviction.

2. Nothing could be further from the truth!

3. Respondent Calibrate Property Management, LLC. knowingly, deceptively, and willfully presented Appellant Nhye and Jolin with what was definitely a discriminatory offer to re-sign their Residential Lease Agreement, while at the same time fraudulently passing the latter as a statutory Notice of Rent Increase.

4. Appellant Nhye and Jolin refused to accept the offer to re-sign their Residential Lease Agreement, insisting instead that they be given a proper Notice of Rent Increase as is required by law.

5. If Appellant Nhye and Jolin had accepted and signed the discriminatory offer, they would have knowingly and foolishly discriminated against themselves, and thus having none other but themselves to blame for the consequences.

6. If Appellant Nhye and Jolin did not accept and sign the discriminatory offer, they would have been made to pay a monetary penalty for their refusal, and that was exactly what Respondent Calibrate Property Management, LLC. did to them.

7. Either way there would have been some sort of reprisal so what was Appellant Nhye and Jolin supposed to have done under the prevailing circumstances?

8. Discrimination as legally defined, is clearly against Federal, State, and County statutes, and yet Appellant Nhye and Jolin were expected to discriminate against themselves. When they refused, they were punished for their refusal. Clearly, all of Respondent Calibrate Property Management, LLC. (Marina Club Apartments) knowingly and willfully acted in bad faith from the beginning, and such bad faith actions evidently violated the State of Washington's Consumer Protection Act. ***See RCW 1986 – Unfair Business Practices. See also Clerk's Papers Pgs. 1 – 3; Pgs. 5 – 6; Pgs. 24 – 40; Pgs. 47 – 51; Pgs. 56 – 69; Pgs. 71 – 71.***

IV. ARGUMENT:

A. **The Standard Of Review Is De Novo.**

1. On appeal from a coerced Findings of Fact, Conclusions of Law, and Judgment of the Superior Court of Washington – King County, the Court rendered a decision on the matter before it but while beforehand having denied the Appellants an adequate due-process of law, and in so doing ignored evidences which would have otherwise convinced any reasonable person of the truth of the matter asserted. Therefore, the standard of review is *de novo*, and should apply to the entirety of said review. **See Rainier View Court Homeowners Ass'n, Inc. v. Zenker, 157 Wn.App.710, 719, 238 P.3d 1217 (2010).**

B. **An Offer To Re-sign A Residential Lease Agreement Is In No Way A Substitute For A Statutory Written Notice Of Rent Increase.**

1. On 18th, 02.2015 A.D., with their Residential Lease Agreement about to expire in a few months, Appellant Nhye received an offer to re-sign his lease, which would have locked in a new rate for a 6-months lease term. The Appellant was given almost a month to decide either to accept or reject the offer. Unfortunately, no offer was ever made to Appellant Jolin even though she was a signatory of previous signings. **See Clerk's Papers Pgs. 1 – 3; Pgs. 5 – 6; Pgs. 24 – 40; Pgs. 47 – 51; Pgs. 56 – 69;**

and Pgs. 71 – 71.

2. Because they were not given a written Notice of Rent Increase, and because the offer being made to them at the time concerned only Appellant Nhye while deliberately excluding Appellant Jolin, the both Appellants saw no need to honor the offer since it did not comply with the State's statutes. *See RCW 59.18.140. See also Clerk's Papers Pgs. 24 – 40; Pgs. 47 – 51; Pgs. 56 – 69; and Pgs. 71 – 71.* Therefore, they decided to ignore it.

3. The consequences for not accepting the offer to re-sign their Residential Lease Agreement (no written Notice of Rent Increase), even though it pertained to Appellant Nhye alone, and even though it deliberately excluded Appellant Jolin, would give rise to the Court proceedings that would lead to the Appellants being wrongfully evicted.

4. Appellants Nhye and Jolin's refusal to accept the offer made to Appellant Nhye to re-sign his Residential Lease Agreement, was due largely in part to the discriminatory clauses and/or languages that the offer contained; such as restricting the Appellant to a 6-months lease term, while other tenants (including newcomers) were allowed lease terms of 9-months to 12-months. *See Clerk's Papers Pgs. 24 – 40; Pgs. 47 – 51; Pgs. 56 – 69; Pgs. 71 – 71.*

5. Respondent Calibrate Property Management, LLC. acting through its Marina Club Apartments, knowingly and willfully acted in bad faith, and such bad faith actions evidently violated the State of Washington's Consumer Protection Act. ***See RCW 1986 – Unfair Business Practices.***

C. The Superior Court Of Washington – King County, Erring In Its Finding That Appellants Nhye And Jolin Ought To Have Been Evicted From Their Apartment, Created A Statutory Claim For Which Relief Can Be Granted.

1. Appellants Nhye and Jolin were not singled-out and targeted for eviction because they did not pay their rent of \$1,245.00, which was due on 5th, 06.2015 A.D., and for which they paid in full only to be accepted and later rejected by Respondent Calibrate Property Management, LLC. (Marina Club Apartments). Rather, they were singled-out and targeted for eviction primarily for filing several complaints with the Code Enforcement Depart of the City of Des Moines, Washington, beginning 29th, 12.2014 A.D.

2. Between 29th, 12.2014 A.D. through 30th, 06.2015 A.D., various complaints were filed against the Respondent by Appellants Nhye and Jolin which led to Respondent Calibrate Property Management, LLC. (Marina Club Apartments) being fined by the City on several occasions.

3. Appellants Nhye and Jolin had at all time been in full compliance

of the Residential Landlord-Tenant Act therefore putting their retaliatory eviction in violation of State statutes. *See RCW 59.18.240; RCW 59.18.250. See also Clerk's Papers Pgs. 24 – 40; Pgs. 47 – 51; Pgs. 56 – 69; and Pgs. 71 – 71.*

D. The Superior Court Of Washington – King County, Erred When It Insisted That Appellant Nhye Be Represented By An Attorney Instead Of Himself In A Civil Trial.

1. On the morning of 18th, 06.2015 A.D., when Appellant Nhye went to Court, he did so with the sole purpose of representing himself in a Show Causing in an Unlawful Detainer action and not remotely expecting to be represented by an Attorney.
2. Upon entering the courtroom, Appellant Nhye proceeded immediately to sign in. At this juncture, the female Bailiff or Courtroom Officer in the Ex-parte Department of the Superior Court of Washington – King County, upon asking for his name and upon matching his name against other names on a list of cases to be heard that morning, instructed the Appellant to leave the courtroom to proceed to the office of the Housing Justice Project, which has an officer within the Court.
3. Appellant Nhye responded by letting the Bailiff/Courtroom Officer know that he was scheduled for a hearing in said courtroom that very

morning. She agreed but still insisted that Appellant Nhye leave the courtroom to speak with someone with the Housing Justice Project before being allowed to appear before the Commissioner.

4. By so doing (speaking in terms of her insistence), the Bailiff/Courtroom Officer in the Ex-parte Department of the Superior Court of Washington – King County, overstepped her judicial mandate(s) to the detriment of Appellant.

5. Naturally, the Hon. Commissioner Tanya Thorp of the Ex-parte Department of the Superior Court of Washington – King County, missed the opportunity of correcting such judicial administrative wrongdoing, when she signed the Findings of Law, Conclusions of Law, and Judgment.

6. The Hon. Commissioner Tanya Thorp of the Ex-parte Department of the Superior Court of Washington – King County, missed the opportunity of also correcting Federal, State, and County statutory violations in which Appellant Nhye's Constitutional and/or Legal Rights of appearing before an Officer of the Court with or without the presence of an Attorney was infringed upon.

7. Similarly so, the Hon. Commissioner Veronica Galvin of the Ex-parte Department of the Superior Court of Washington – King County, also missed the opportunity of also correcting Federal, State, and County

statutory violations in which Appellant Nhye's Constitutional and/or Legal Rights were infringed upon, when she signed the Order Denying Motion and Declaration to Vacate Judgment and to Stay Enforcement of Writ of Restitution.

8. The trial Court erred in that it overstepped its bounds when it decided to assign an Attorney to the Appellant in a civil suit, yet inadequately, and without proper oversight, to the disadvantage of Appellant Nhye. *See Clerk's Papers Pgs. 54 – 55; and Pgs. 52 – 53.*

E. Inadequate Representation By The Attorney From The Housing Justice Project Assigned To Represent Appellant Nhye, Attorney Michelle Hunter, Who Lied To, Coerced, And Deceived The Appellant Into Agreeing To, And Signing An Agreement To Have Him And His Family Be Evicted From Their Apartment.

1. After being made to leave the courtroom to speak with the staff at the Housing Justice Project, Appellant Nhye was given an intake package to fill in. Upon completion, the intake package was given back to the staff of the Housing Justice Project who later assigned Ms. Hunter to Appellant's case on the basis of limited representation.

2. Ms. Hunter in the presence of an Intern, had a lengthy discussion with Appellant Nhye in which the Appellant informed her that he did not owe any rent (having already paid \$1,245.00 in rent and utilities which

was accepted and later returned to the Appellant); that he and his family were singled-out and targeted for eviction for filing various complaints with the Code Enforcement Department of the City of Des Moines, Washington, against Respondent Calibrate Property Management, LLC. (Marina Club Apartments), and that both he and his family were being actively discriminated against by Respondent Calibrate Property Management, LLC. (Marina Club Apartments).

3. Among many other questions posed to Appellant Nhye, Ms. Hunter wanted to know if the Appellant had been in compliance with the terms of the Residential Lease Agreement both prior to filing complaints to the Code Enforcement Department of the City of Des Moines, Washington, about Respondent Calibrate Property Management, LLC. (Marina Club Apartments).

4. Appellant Nhye responded affirmatively and even went as far as providing Ms. Hunter with many evidences to substantiate the claims of targeted eviction and discrimination among other things. Those evidences covered roughly 7-months of receipts in which both Appellants Nhye and Jolin paid \$1,245.00 for rent and utilities; never being late paying for said rent and utilities, or being complained against, etc.

5. Now armed with overwhelming evidences she had personally

reviewed in the presence of an Intern, Ms. Hunter informed Appellant Nhye that she would first seek to amicably resolve the matter without the need of us having to appear before a Commissioner.

6. With that said, Appellant Nhye would not speak to Ms. Hunter again for over 1 ½ hour and when he finally did, she approached him with an offer in which she urged him to agree to be evicted in exchange for being allowed to stay in the apartment for 18-days and thereafter be evicted rather than the statutory 3-days in which the Appellant and his family would have to vacate their apartment.

7. According to Ms. Hunter, the 18-days arrangement she presented to me was proposed to her by the Attorneys representing Respondent Calibrate Property Management, LLC solely on grounds of Appellant Nhye's disability, and not the evidences I gave to her. Whether or not Ms. Hunter even showed Appellants Nhye's many documented evidences to the other Attorneys remains to be known.

8. Appellant Nhye refused to accept the settlement offer... maintaining instead that he and his family were being targeted, retaliated and discriminated against, and subsequently facing wrongful eviction even though they pay their rent and utilities (water, sewer, garbage) in full.

9. In a desperate attempt of convincing Appellant Nhye to accept the

settlement offer and thereby sign on the dotted line, Ms. Hunter went on by deceiving and lying to the Appellant, and coercing him... telling him that the Commissioner scheduled to hear the Appellant's case was to be the Hon. Commissioner Carlos Velategui. Ms. Hunter went on to tell the Appellant that the Hon. Commissioner Velategui was a no-nonsense Commissioner and that if Appellant Nhye did not accept the settlement offer, the Commissioner would then ensure that the Appellant and his family be evicted after the statutory 3-days.

10. At this juncture, Appellant Nhye interrupted Ms. Hunter and informed her that she was mistaken... that when he was briefly in the courtroom around 09:00 AM, that it was a female (who turned out to be Hon. Commissioner Tanya Thorp) that sat on the bench and not a man. To this end Ms. Hunter responded by saying that as far as she was concerned, the Hon. Commissioner Velategui was the one scheduled to hear my case and not someone else.

11. Against every better judgment and common sense, overwhelmed by the prospect of losing his apartment in 3-days while taking into consideration his disabilities which would have hindered his ability to be out of the apartment in said timeframe, Appellant Nhye made the desperate decision of accepting the settlement offer which gave he and his

family 18-days to vacate their apartment.

12. Notwithstanding Appellant Nhye's acceptance of an offer which led to him and his family being evicted from their apartment, the actions of Ms. Hunter (poor representation by failing to present evidences given to her to the Commissioner) compromised her duties as the Appellant's legal representative. Furthermore, everything seems to indicate that Ms. Hunter connived with the Attorneys representing Respondent Calibrate Property Management, LLC, in ensuring that the Appellants were evicted. ***See RPC 8.4(c)(d)(k)(m). See Clerk's Papers Pgs. 54 – 55; and Pgs. 52 – 53.***

13. To make matter even worse, the Hon. Commissioner Veronica Galvin on 25th, 06.2015 A.D., refused to reconsider the matter, even though she was told of Ms. Hunter's conduct during a hearing into the Appellant's Motion and Declaration to Vacate Judgment and to Stay Enforcement of Writ of Restitution. ***See Official Record of Proceeding Held before the Honorable Commissioner Veronica Galvin, on 25th, 06.2015 A.D.***

14. In the end, Appellants Nhye and Jolin lost their apartment as they were evicted on 6th, 07.2015 A.D. To this sad end, the collective individual actions of the Hon. Commissioners Tanya Thorp, and Veronica Galvin, and that of Ms. Hunter negatively impacted the final courses of the case. ***See the Code of Judicial Conduct's Canons 1, 2. See also RPC***

8.4(c)(d)(k)(m). *See* Clerk's Papers Pgs. 54 – 55; and Pgs. 52 – 53.

F. **The Court of Appeals of the State of Washington – Division I, must reverse the Superior Court of Washington – King County decision, based upon the following cases provided below, but at the same time not limit itself to these cases.**

1. That Respondent Calibrate Property Management, LLC failed to state in its notices a good faith estimate of actual amount owed, if any, by Appellants Nhye and Jolin. *See Foisy v. Wyman, 83 Wn.2d 22, 32-33, 515 P.2d 160 (1973). See also Clerk's Papers Pgs. 1 – 3; and Pgs. 5 – 6.*
2. That Appellants Nhye and Jolin paid their rent and utilities owing within a 3-days period. Respondent Calibrate Property Management, LLC.'s refusal of proper tender of rent can be raised as a defense. *See International Indus. Inc. v. United Mortgage Co., 96 Nev. 150, 606 P.2d 163 (1980)(citing Thrifty Supply Co. v. Deverian Builders, 3 Wn. App. 425, 475 P.2d 905 (1970). See also Clerk's Papers Pgs. 1 – 3; Pgs. 5 – 6; Pgs. 24 – 40; Pgs. 47 – 51; Pgs. 56 – 69; and Pgs. 71 – 71.*
3. That when Respondent Calibrate Property Management, LLC. accepted Appellants Nhye and Jolin rent and utilities payment on 5th, 06.2015 A.D., with allegation/knowledge that the Appellants had breached

the terms of the Residential Lease Agreement, the Respondent waived their right to evict Appellants based on the alleged breach(es). The trial Court should have made them to wait until breach(es) continued and/or new breaches occurred. *See Wilson v. Daniels, 31 Wn.2d 633, 198 P.2d 496 (1948); Wilson v. Daniels, supra. See also Clerk's Papers Pgs. 1 – 3; Pgs. 5 – 6; Pgs. 24 – 40; Pgs. 47 – 51; Pgs. 56 – 69; and Pgs. 71 – 71.*

4. That Respondent Calibrate Property Management, LLC waived its right to evict when it accepted the undisputed amount of rent/utilities within notice period. *See Hwang v. McMahill, 103 Wn. App. 945, 953, 15 P.3d 172, 177 (2001). See also Clerk's Papers Pgs. 1 – 3; Pgs. 5 – 6; Pgs. 24 – 40; Pgs. 47 – 51; Pgs. 56 – 69; and Pgs. 71 – 71.*

5. That Respondent Calibrate Property Management, LLC waived its right to proceed with the Unlawful Detainer action when it accepted the undisputed rent/utilities, or late fees, or Attorney's fees after service of Summons and Complaint. Appellants Nhye and Jolin were served with a Summons and Complaint on or about 19th, 05.2015 A.D., yet the Respondent accepted the Appellants' rent and utilities payment in full on 5th, 06.2015 A.D. *See Housing Authority v. Newbigging, 105 Wn. App. 178, 187, 19 P.3d 1081, 1086 (2001). See also Clerk's Papers Pgs. 1 – 3;*

Pgs. 5 – 6; Pgs. 24 – 40; Pgs. 47 – 51; Pgs. 56 – 69; and Pgs. 71 – 71.

6. That Appellants Nhye and Jolin Tenant did not engage in any nuisance, waste or unlawful business on remises; that the notice was irrelevant. *See RCW 59.12.030(5); RCW 59.18.130(5). See also Clerk's Papers Pgs. 1 – 3; Pgs. 5 – 6; Pgs. 24 – 40; Pgs. 47 – 51; Pgs. 56 – 69; and Pgs. 71 – 71.*

7. That Respondent Calibrate Property Management, LLC failed to adequately inform the Appellants of the lease or statutory violation they were being asked to correct, when it sent them various notices. *See Byrkett v. Gardner, 35 Wash. 668, 77 P. 1048 (1904). See also Clerk's Papers Pgs. 1 – 3; Pgs. 5 – 6; Pgs. 24 – 40; Pgs. 47 – 51; Pgs. 56 – 69; and Pgs. 71 – 71.*

8. That Respondent Calibrate Property Management, LLC's eviction of Appellants Nhye and Jolin was simply motivated by retaliation. *See RCW 59.18.240; RCW 59.18.250. See also Clerk's Papers Pgs. 1 – 3; Pgs. 5 – 6; Pgs. 24 – 40; Pgs. 47 – 51; Pgs. 56 – 69; and Pgs. 71 – 71.* Furthermore, Respondent Calibrate Property Management, LLC's eviction of Appellants Nhye and Jolin was simply motivated by various forms of discrimination in clear violation of Federal, State, and County statutes. *See 42 USC 3601-3619; RCW 49.60.030; and KCC12.20.040. See also*

**Clerk's Papers Pgs. 1 – 3; Pgs. 5 – 6; Pgs. 24 – 40; Pgs. 47 – 51; Pgs. 56
– 69; and Pgs. 71 – 71.**

V. **CONCLUSION:**

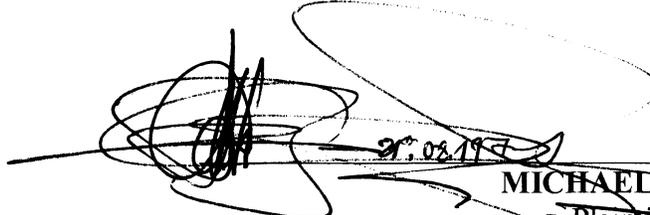
For all of the reasons stated above, Appellants Nhye and Jolin respectfully request that the Court of Appeals, Division I, reverse the Findings of Law, Conclusions of Law, and Judgment, and the Writ of Restitution, issued by the Superior Court of Washington – King County (the Hon. Commissioner Tanya Thorpe presiding), on 18th, 06.2015 A.D., in favor of Respondent's Calibrate Property Management.

Appellants Nhye and Jolin also respectfully request that the Court of Appeals, Division I, also reverse the Order Denying Motion and Declaration to Vacate Judgment and to Stay Enforcement of Writ of Restitution, issued by the Superior Court of Washington – King County (the Hon. Commissioner Veronica Galvin presiding), on 25th, 06.2015 A.D., also in favor of Respondent's Calibrate Property Management.

The Superior Court of Washington – King County, failed to be impartial, compromised the confidence in, and the overall independence of the judiciary branch of our government, and caused the Appellants and their minor children to suffer many hardships which emanated from it issuing poor judgments.

RESPECTFULLY SUBMITTED.

DATED this 17th day of the 3th month, 2016 A.D.


~~27.08.197~~
MICHAEL NYHE,
~~Plaintiff~~ Pro Se
Appellant


LACY JOLIN,
~~Plaintiff~~ Pro Se
Appellant

DECLARATION OF SERVICE:

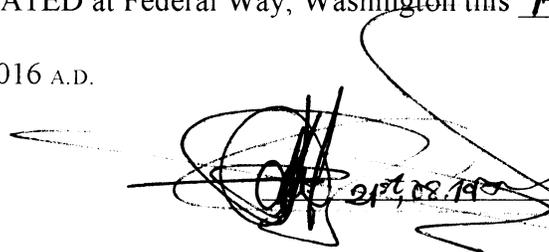
Appellants Michael Nhye and Lacy Jolin, states and declares as follows:

1. That we over the age of 18-years and competent to testify in this matter, and that we make this declaration based on personal knowledge and belief.
2. That on 18th, 05.2016 A.D, we mailed a true and correct copy of Appellants Nhye and Jolin's Opening Brief to the following Attorneys for Respondent Calibrate Property Management, LLC:

**Ms. LAUREN NOVACK (WSBA # 16826)
Mr. MICHAEL WALSH (WSBA # 29352)
Mr. RANDALL REDFORD (WSBA # 21529)
Puckett and Redford, PLLC.
901 5th Avenue, Suite 800
Seattle, WA 98164-2048**

We declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Federal Way, Washington this 17th day of the 5th month, 2016 A.D.


MICHAEL NYHE,
~~Plaintiff~~ Pro Se
Appellant


LACY JOLIN,
~~Plaintiff~~ Pro Se
Appellant