

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA

CIVIL DIVISION

National Association of Certified
Home inspectors
1750 30th Street
Suite 301
Boulder, CO 80301

Plaintiff

v.

Pennsylvania Home Inspectors'
Coalition, Inc.
197 Marlboro Road
Yardley, PA 19067

David Koloskee
4021 West 12th Street
Erie, PA 16505

Richard Delaney
275 Pioneer Road
Franklin, PA 16323

Matthew Steger
2133 Andrew Avenue
Elizabethtown, PA 17022

and

Western Pennsylvania Chapter of the
National Association of Home Inspectors:
a/k/a NAHIPA and NAHIPA.ORG
275 Pioneer Road
Franklin, PA 16323

Defendants

0706162

CIVIL ACTION NO. _____

JURY TRIAL DEMANDED

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NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after

this Complaint and Notice are served, by entering a written appearance personally or by Attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a Judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

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COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

PARTIES

1. Plaintiff, National Association of Certified Home Inspectors (“NACHI”) is a Colorado Nonprofit Corporation and is also a tax exempt trade association under Section 501(C)(6) of the Internal Revenue Code. Plaintiff’s address is 1750 30th Street, Ste. 301, Boulder, Colorado 80301.

2. Defendant, Pennsylvania Home Inspectors’ Coalition, Inc. (“PHIC”), is a non-stock, non-profit corporation organized and existing under the laws of the Commonwealth of Pennsylvania and maintains its principal place of business at 187 Marlboro Road, Yardley, Pennsylvania. (Bucks County).

3. Defendant, David Koloskee (“Koloskee”), is an individual residing at 4021 West 12th Street, Erie, PA 16505. (Erie County).

4. Defendant, Richard Delaney Jr. (“Delaney”), is an individual residing at 275 Pioneer Road, Franklin, PA. 16323 (Venango County).

5. Defendant, Mathew Steger (“Steger”), is an individual residing at 2133 Andrew Ave. Elizabethtown, PA 17022. (Lancaster County).

6. Defendant, the Western Pennsylvania Chapter of the National Association of Home Inspectors, also know as NAHIPA and NAHIPA.ORG (“the Chapter”), is an entity or unincorporated association of home inspectors in Western Pennsylvania who are members of the National Association of Home Inspectors (“NAHI”). The Chapter has a place of business for service of process at 275 Pioneer Road, Franklin, PA. 16323 Plaintiff does not presently know whether the Chapter is incorporated.

7. Upon information and belief, Koloskee, Delaney, and Steger are and were at all times relevant to this action members of NAHI.

8. Upon information and belief, Koloskee, Delaney, and Steger are and were at all times relevant to this action also members, officers, and/or directors of PHIC.

9. Upon information and belief, Delaney is and was at all times relevant to this action a member of and President of the Chapter.

JURISDICTION AND VENUE

10. This Court has jurisdiction over the Defendants because all Defendants are citizens of Pennsylvania, all of Plaintiff’s claims arise out of the Defendants’

conduct in Pennsylvania, and the acts of Defendants caused harm to the Plaintiff and its members in Pennsylvania.

11. Venue is proper in Bucks County because PHIC is located in Bucks County and Plaintiff is seeking to enforce joint and several liability against it and all of the other defendants.

GENERAL ALLEGATIONS

12. The home inspection industry is made up primarily of individuals who conduct home inspections as sole proprietors or through single-owner corporations or limited liability companies.

13. Home inspections have become common in the real estate industry as part of the buying and selling of residential homes, and they are usually performed on behalf of prospective buyers.

14. Generally, home inspectors market their services through real estate agents, through affiliations with trade associations, and through direct marketing to consumers.

15. There are three major national trade associations representing the interests of home inspectors. They are the Plaintiff ("NACHI"), the National Association of Home Inspectors ("NAHI"), and the American Society of Home Inspectors ("ASHI").

16. There is some competition between the three trade associations in that they compete for members and attempt to help market the services of their members; however, NACHI allows members of NAHI and ASHI to also be members of NACHI.

17. Prior to 1998 NACHI was an unincorporated association, but NACHI incorporated as a Pennsylvania non-profit corporation in 1998 and was later converted to a Colorado nonprofit corporation. Since incorporating NACHI has grown to become the largest trade association in the Home Inspection industry. The reasons for NACHI's success are many, but one significant reason is that NACHI does a better job of promoting the services of its members than other trade associations. NACHI also provides more benefits to its members than the other trade associations at a better price.

18. As a result of NACHI's growth after its incorporation, some members of NAHI, ASHI, and/or other trade associations in the industry began to lose business to NACHI members and/or began to worry that they would lose business to NACHI members.

19. In approximately 2000 the Pennsylvania General Assembly began to consider legislation to regulate the home inspection industry in Pennsylvania.

20. Between approximately January 1, 2000, and November 26, 2001, the exact date being unknown to Plaintiff, a group of Pennsylvania home inspectors comprised largely of members of NAHI and ASHI began to lobby the Pennsylvania General Assembly and/or local governments for legislation they believed would be favorable to them and unfavorable to NACHI and its members. This group called itself the Pennsylvania Home Inspectors Coalition (“PHIC”) and incorporated as a Pennsylvania non-profit corporation on November 26, 2001.

21. On December 20, 2001, the Pennsylvania Home Inspection Law, 68 Pa. C.S.A. Section 7501 *et seq.* (the “Act”) became effective.

22. The Act governs the home inspection industry in Pennsylvania by establishing requirements for home inspectors. The Act is incorporated herein by reference, but a summary of the Act’s requirements is as follows:

- a. Home inspectors are required to be a full member in good standing of a national, not-for-profit home inspection association or must be supervised by someone who is;
- b. Members must comply with a code of conduct and attend continuing professional education classes as an ongoing condition of membership;
- c. Home inspectors are prohibited from performing repairs on the same house he or she inspected within the preceding 12 months;
- d. The party selling the property that is the subject of the inspection has the right to receive a free copy of the report upon request;
- e. Home inspectors must maintain insurance against errors and omissions and general liability coverage;
- f. A violation of this new law amounts to a violation of Pennsylvania’s Consumer Protection Law;

23. The Act defines a “national association” as an association with members in more than 10 states.

24. NACHI has members in all fifty states and throughout Canada and is therefore a “national association” under Pennsylvania law.

25. The Act defines a “full member” as a person who has performed or participated in more than 100 home inspections and has passed a recognized or

accredited examination; NACHI defines a “full member” the same way and has done so at all times relevant to this action.

26. NACHI has been in compliance with the Act since the Act became effective in December 2001.

27. PHIC asserts to the public now and has in the past asserted to the public that NACHI is not and has never been compliant with Pennsylvania law. PHIC sometimes offers no explanation for these public statements, but when it does offer an explanation, PHIC’s explanation tends to be that “only three home inspection associations have submitted verifiable proof of compliance with the state law” or words to that effect; the three associations that PHIC lists as compliant are NAHI, ASHI, and the American Institute of Inspectors (All).

28. Membership in PHIC is not open to NACHI members because membership in PHIC is only open to inspectors who belong to a national home inspector organization that has provided PHIC with “verifiable proof of compliance” with Pennsylvania law.

29. PHIC has never publicly defined what constitutes “compliance” or “verifiable proof,” but upon information and belief, PHIC’s internal position is that NACHI’s examinations are not “recognized” or “accredited” under Pennsylvania law because NACHI allows its members to take its examinations online. Therefore, full members of NACHI can never provide verifiable proof of compliance with Pennsylvania law to PHIC’s satisfaction.

30. The allegations above, and the allegations set forth hereafter, are incorporated by reference into each and every cause of action set forth in this Complaint as if separately set forth therein.

ALLEGATIONS OF STATEMENTS AND ACTIONS OF DEFENDANTS

31. The PHIC website contains an article “for immediate release” dated October 15, 2005. The article states in relevant part, “...Pennsylvania Home inspectors Coalition was formed to represent a unified voice of the majority of Compliant home Inspectors in the State and act as a watchdog to further legislative initiatives effecting [*sic*] the Profession. Since our law is self enforcing PHIC also took on the task of verifying compliant organizations and Inspectors.”

32. The article further states in relevant part, “NACHI: Responded with only verbal communication and direction to their website. . . It is PHIC’s opinion, that due to a lack of verifiable responses and continued refusals, NACHI is not compliant.”

33. In September of 2003, PHIC and Joe Kelly, who presently acts as PHIC’s corporate Secretary, filed a complaint in the Court of Common Pleas in

Chester County, Pennsylvania for Declaratory Relief (“The PHIC/Kelly lawsuit”). The complaint sought a declaration that NACHI was not at the time the Act became effective in Pennsylvania and “has never been subsequent thereto a National Home Inspectors Association.”

34. The PHIC/Kelly lawsuit was dismissed on June 15, 2005. The case was not dismissed on the merits but for lack of proper service. Further, in dismissing that action, the Court stated: “Finally there is no indication that Plaintiffs are authorized to enforce the Home Inspection Law, 68 Pa. C.S.A.”

35. Since the dismissal of the PHIC/Kelly lawsuit, PHIC and its members, officers, and directors (including Delaney, Steger, and Koloskee) have continued to hold themselves out to the public as a watchdog organization in Pennsylvania, suggesting powers to interpret and enforce the Act that it does not have. Defendants have done this with the intent of hurting NACHI’s image, reducing NACHI’s membership, to discourage Pennsylvania consumers from hiring NACHI members to perform home inspections, and to stifle competition from NACHI members in the home inspection industry.

36. Since the dismissal of the PHIC/Kelly lawsuit, PHIC and its members, officers, and directors (including Delaney, Steger, and Koloskee) continue to make false statements concerning NACHI’s alleged non-compliance with Pennsylvania law.

37. Recently, PHIC, its members, supporters, and Defendants have begun to be more aggressive in making public statements, particularly to realtors, about NACHI’s alleged failure to comply with Pennsylvania law. These statements, include, but are not limited to, the statements set forth in paragraphs 36 through 38 below.

38. In a letter dated May 17, 2007, Delaney, who is the President of the Chapter and a named director of PHIC, sent a letter to some Pennsylvania realtors and in that letter wrote, “To date **only three home inspection associations have submitted verifiable proof of compliance with the state law.** The three organizations are National Association of Home Inspectors (NAHI), American Society of Home Inspectors (ASHI) and American Institute of Inspectors (AII).” (Bold font in original letter). The letter further stated: “These members [NAHI members] are also part of the Pennsylvania Home Inspectors Coalition, the watchdog group that polices our ranks to ensure compliance with the law.” NACHI was not listed as one of the associations that are compliant with Pennsylvania law. The letter was on the letterhead of the Chapter, was signed by Delaney, and indicated he is the President of the Chapter.

39. In an email dated June 19, 2007, Koloskee stated: “Many inspectors belong to NACHI, including Seaholm Home Inspection. NACHI is NOT recognized as a home inspection organization that is compliant with

Pennsylvania home inspection law.” The letter also stated that in order to comply with Pennsylvania law one of the requirements is that the inspector belong to NAHI, AAHI, or ASHI. In the email Koloskee stated he is a member of PHIC and NAHI. Koloskee distributed this email to at least six realtors in the Erie, Pennsylvania area.

40. In its June 2007 edition of its *Closing Comments* newsletter the Lancaster County Association of Realtors (“LCAR”) published an article authored by Steger entitled; “Home Inspector Associations and PA Law (Act 114).” The article included the following statements:

- a. “There are many home inspector associations out there, but did you know that only three fulfill the requirements of the PA Home Inspectors Compliance Law (also known as Act 114)?”
- b. “The three associations that fulfill the PA Law requirements (according to PHIC) are the National Association of Home Inspectors (NAHI), the American Society of Home Inspectors (ASHI) and the American Institute of Inspectors (All).”
- c. “Since the current PA law has no teeth for official state enforcement, it is up to consumers and real estate agents to verify the inspector’s membership in either NAHI, ASHI or All.”
- d. “If your inspector is not a member of NAHI, ASHI, or AHI, he is in violation of the PA Law, according to PHIC.”
- e. “Believe it or not, there are several other home inspection associations that are in violation of PA Law (according to PHIC). One such organization is called NACHI (National Association of Certified Home Inspectors).”
- f. “A NACHI designation after one’s name doesn’t prove one way or the other that he is a qualified home inspector since the NACHI exam is not proctored and is simply done online. Who knows who actually took the online exam and if they did so as an open book test. The NAHI and ASHI exams are not open book and truly test the examinee based on his technical knowledge.”

41. Upon information and belief, LCAR’s *Closing Comments* is widely distributed among realtors in Lancaster County, a fact known to Steger when he submitted the article for publication.

42. NACHI relies on its good reputation among consumers and realtors to recruit and retain members. NACHI members rely on NACHI’s good reputation to attract customers and to obtain referrals from real estate agents.

43. All of the statements of the Defendants complained of herein either referred explicitly to NACHI or were worded so as to make clear that NACHI was the organization being referred to as not being compliant with Pennsylvania law.

44. All of the statements of the Defendants complained of herein tended to disparage NACHI and the services of its members, to harm the reputation of NACHI and its members, to lower NACHI and its members in the eyes of the community, to deter existing NACHI members for renewing their NACHI memberships, to deter other inspectors from joining NACHI, to deter consumers from using NACHI inspectors, and to deter realtors from referring customers to NACHI and/or to NACHI inspectors.

45. All of the statements of the Defendants complained of herein were understood by those who heard or saw the statements as referring to NACHI and its members.

46. All of the statements of the Defendants referred to in this Complaint were made with knowledge that the statements were false or with reckless disregard of whether they were false.

47. All of the statements of the Defendants referred to herein were made with malice and warrant an award of exemplary damages. Any such statements that were not made with malice were made negligently.

48. As a result of the defamatory and deceptive conduct of the Defendants at outlined above, NACHI and its members in Pennsylvania have been harmed and continue to be harmed through loss of business, loss of membership, and damage to their reputations. The monetary damages suffered by Plaintiff on each Count in this Complaint exceeds \$50,000.00.

FIRST COUNT Defamation

49. The Defendants' public statements, including those identified in paragraphs 38 through 40 above are, on their face, false and deceptive.

50. Defendants have published the false, deceptive and defamatory remarks to third parties through defendants' use of the Internet, websites, newsletters and/or mass communication to consumers and real estate agents throughout Pennsylvania.

51. Defendants' false allegations target consumers and the real estate industry and are sufficient to negatively affect NACHI's professional reputation in the home inspection industry, and to impact third parties in their decisions not hire NACHI inspectors, and to impact real estate agents in their decisions not to

refer business to NACHI inspectors and/or not to associate with NACHI and NACHI inspectors.

52. As a result of the aforementioned defamatory communications by Defendants, NACHI and its membership have suffered financial injury in the form of present and future loss of business and loss of reputation.

SECOND COUNT
Injurious Falsehood / Commercial Disparagement

53. The statements of the Defendants complained of herein all referred to the business of NACHI, NACHI's compliance with Pennsylvania law, and the competency and ethics of NACHI's members in the home inspection industry.

54. The statements of the Defendants complained of herein were all false.

55. Defendants intended that publication of their statements would cause pecuniary loss to Plaintiff or reasonably should have recognized that publication would result in pecuniary loss.

56. Defendants' publication of the statements caused actual pecuniary loss to NACHI and to its members.

57. Defendants knew the statements were false or acted in reckless disregard of their truth or falsity.

THIRD COUNT
Tortious Interference with Existing and Prospective Business Relations

58. At the time of the statements of the Defendants, NACHI had existing contractual relationships with its existing members in Pennsylvania, and reasonably expected that those members would renew their NACHI membership. NACHI also contracted with a number of vendors to provide benefits for its members in Pennsylvania, and those benefits included education as well as discounts on goods and services. NACHI reasonably expected its good relations with its vendors to continue.

59. At the time of the statements of the Defendants, NACHI had prospective contractual relationships with current inspectors who were likely to renew their membership in NACHI, with inspectors who were likely to join NACHI, and with vendors who were likely to contract with NACHI in order to provide benefits to NACHI members.

60. At the time of the statements of the Defendants, NACHI members had contractual relationships with consumers. NACHI members also had good relationships with realtors likely to refer potential customers to them.

61. The Defendants' false and deceptive statements have been published and disseminated to third parties with the intent to interfere with NACHI's existing and prospective business relationships with its members and vendors, and to interfere with the existing and prospective business expectancies of NACHI's members.

62. Defendants published their false and misleading statements maliciously and with no justification.

63. As a result of Defendants' acts, NACHI has suffered actual harm in reduced renewal of memberships, reduced recruitment of new members, and being unable to obtain benefits for its members on favorable terms. These things have resulted in less revenue to NACHI from membership dues. NACHI members have also suffered actual harm in damage to their reputation and reduced referrals from realtors.

FOURTH COUNT Unlawful Practice of Law

64. At all times relevant to this action, Pennsylvania law prohibited any person from providing legal advice or otherwise practicing law in Pennsylvania unless that person was licensed to practice law in Pennsylvania.

65. Defendants' statements to realtors and consumers in Pennsylvania that NACHI and its members are not compliant with the Act or Pennsylvania law were statements of a legal opinion, and Defendants intended the realtors and other recipients of those statements to rely on those statements to the detriment of NACHI and its members.

66. Upon information and belief, none of the Defendants were licensed to practice law in Pennsylvania at the time they made or published the statements that are the subject of this action.

67. NACHI has been harmed by the Defendants' actions in providing legal opinions to realtors and others that Defendants are not competent to provide because they are not licensed to practice law in Pennsylvania.

68. Consumers and real estate agents in Pennsylvania have been deceived by the Defendants' statements that NACHI is not compliant with Pennsylvania law, and will continue to be so deceived unless Defendants are restrained from making any such statements.

FIFTH COUNT
Misleading Corporate Name

69. PHIC deliberately chose a name designed to imply that it has legal authority to determine what trade associations and which home inspectors are in compliance with the Act and other laws of Pennsylvania. Further, PHIC typically uses the acronym “PHIC” to imply that it is a government agency and has legal authority to determine what trade associations and which home inspectors are in compliance with the Act and other laws of Pennsylvania.

70. At all times relevant to this action Pennsylvania law provided that no corporate name shall imply that the corporation is an agency of the Commonwealth. See, 15 PA.C.S.A. § 1303(c)(1)(i).

71. PHIC’s name and acronym mislead the public to believe that PHIC is a government agency, that it has legal authority to interpret the law, and/or that PHIC is a neutral private agency working for the public good, when, in fact, PHIC is a group of home inspectors composed primarily of NAHI and ASHI members that seeks to stifle competition from NACHI and its members.

72. NACHI and the public have been harmed by PHIC’s use of a misleading name, and will continue to be so harmed unless PHIC is restrained from using that name and acronym or unless PHIC is required to include an appropriate disclaimer in all communications making clear that it is not an agency of the Commonwealth and has no legal authority to determine which home inspector associations are in compliance with Pennsylvania law.

SIXTH COUNT
Revocation of Non-Profit Status

73. PHIC is and was at all times relevant to this action an organization designed and intended to promote the interests of NAHI and ASHI and their members, and designed and intended to harm the interests of NACHI and its members.

74. At all times relevant to this action Pennsylvania law provided that a nonprofit corporation must be able to fulfill its purpose without financial benefit to the members, except as salaries and expenses. The law also required that the nonprofit should not contemplate pecuniary gain or profit, incidental or otherwise.

75. Upon information and belief, PHIC has provided and continues to provide pecuniary gain to its members by reducing competition from NACHI and NACHI inspectors, and by allowing PHIC inspectors to promote their businesses by using a nonprofit entity to disparage NACHI and discourage competition from NACHI and its members.

76. NACHI, its members, and the public have been harmed and continue to be harmed by PHIC's improper use of the nonprofit corporate form in the manner described herein.

77. NACHI, its members, and the public will continue to be harmed by PHIC's improper use of the nonprofit corporate form in the manner described herein unless PHIC is restrained from continuing to do so.

SIXTH COUNT Negligence

78. In making the statements complained of herein Defendants had a duty to exercise reasonable care.

79. At all times relevant to this action all information necessary to determine whether NACHI is compliant with Pennsylvania law was available to the public on NACHI's website at www.nachi.org. This information included, but was not limited to, NACHI's requirements for membership and full membership, NACHI's code of ethics, NACHI's standards of practice, NACHI's continuing education requirements, and NACHI's requirements for E&O insurance if required by the inspector's state.

80. Defendants breached their duty to exercise reasonable care in making the statements complained of herein.

81. As a direct and proximate cause of the Defendants' negligence in making the statements complained of herein, NACHI and its members have been harmed in an amount to be determined at trial, but which exceeds \$50,000.00.

SEVENTH CLAIM FOR RELIEF Civil Conspiracy

82. As set forth above, upon information and belief, Defendants acted with a common purpose to do one or more unlawful acts or to do one or more lawful acts by unlawful means or unlawful purpose.

83. The Defendants have acted in unison to systematically destroy the reputation and business of NACHI and its membership by falsely alleging NACHI is not compliant with the Act.

84. PHIC has historically held itself out as the watchdog of the home inspection industry in Pennsylvania and continues to do so.

85. Through their public statements the Defendants have overtly acted to harm the interests of NACHI and its members, to stifle competition from NACHI inspectors, and to further the interests of NAHI and ASHI.

86. NACHI has suffered actual legal damages as a result of the conspiracy of the Defendants.

RELIEF REQUESTED

WHEREFORE, Plaintiff asks this Court to provide the following relief:

1. That Defendants be permanently enjoined from publishing any statements that NACHI is not compliant with the Act or Pennsylvania law unless and until Defendants have obtained a judicial declaration from a court of competent jurisdiction that NACHI is not compliant with the Act or Pennsylvania law.

2. With regard to any statements of Defendants that NACHI is not compliant with the Act or Pennsylvania law, an Order requiring Defendants to include a conspicuous disclaimer making clear that Defendants are not attorneys, that PHIC is not a government agency, and that PHIC has no authority to determine which inspector organizations are in compliance with the Act or the laws of Pennsylvania.

3. An Order that Defendants identify all statements made by any of them during the past five years stating or implying that NACHI is not compliant with the Act or Pennsylvania law, and identifying the recipients of all such statements.

4. An Order that Defendants include the following conspicuous disclaimer whenever it or its members or agents use the terms "PHIC" or "Pennsylvania Home Inspector's Coalition," to wit: "PHIC is not an agency of the Commonwealth of Pennsylvania and has no legal authority to determine which inspector organizations are in compliance with the laws of the Commonwealth."

5. An Order enjoining any Defendants who are not licensed to practice law in Pennsylvania from publishing any legal opinion that NACHI is not compliant with the Act or Pennsylvania law.

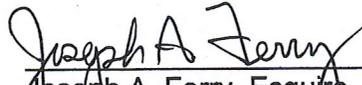
6. Judgment against the Defendants for damages resulting from their per se defamation of NACHI.

7. Judgment against the Defendants for actual damages proven at trial.

8. Judgment against the Defendants for exemplary damages.

9. Such other relief as the Court finds appropriate.

Respectfully submitted.


Joseph A. Ferry, Esquire
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Attorney for Plaintiff,
NATIONAL ASSOCIATION OF
CERTIFIED HOME INSPECTORS

VERIFICATION

I, NICK GROMICKO, do hereby verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. §4904 relating to unsworn falsification to authorities.



Nick Gromicko