

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

LESLIE RAE YOUNG,

Plaintiff,

vs.

DAVE HEINEMAN, Governor of the State of
Nebraska, in his official capacity; JON
BRUNING, Attorney General of Nebraska, in
his official capacity; JOHN A. GALE, Secretary
of State & Chairperson of the Nebraska Real
Estate Commission and GREG LEMON,
Director of the Nebraska Real Estate
Commission, in their official capacities,

Defendants.

Civil Case No.

VERIFIED COMPLAINT

Plaintiff Leslie Rae Young (“Young”), by and through her undersigned counsel, brings this Verified Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof states the following:

COMMON ALLEGATIONS

1. This is a constitutional challenge under the 14th Amendment, the Commerce Clause, and 42 U.S.C. § 1983 to Nebraska Revised Statute § 81-885.03 (“Statute”).

2. Legislative Bill 691, which became effective July 15, 2010, instituted several changes to the Nebraska Real Estate License Act, including granting authority to the Nebraska Real Estate Commission (“Commission”) to exercise personal jurisdiction over individuals; providing that a cease and desist order now issued by the Commission shall become final ten days after issuance unless a hearing is requested; and providing that, if such cease and desist order becomes final and the Commission makes a finding of guilt against an individual in a proceeding, the Commission may impose a fine of up to \$1,000.00 per day.

3. On July 20, 2010, Defendant Greg Lemon (“Lemon”), as Director of the Commission, sent a cease and desist order to Young pursuant to the Nebraska Real Estate License Act, and pursuant to the Statute.

4. The Statute, as most recently amended, now attempts to extend personal jurisdiction to Young based upon only the Commission’s assertion, and the Statute requires Young to appear and defend herself even though the exercise of personal jurisdiction violates basic constitutional minimum protections. Moreover, the Commission’s regulations preclude Young from seeking relief through the administrative process even though the Statute’s extension of personal jurisdiction to Young is unconstitutionally overbroad. If Young refuses to submit to the jurisdiction of the Commission and the cease and desist order against Young becomes final, Young will be subject to licensing penalties, including substantial

civil penalties. Accordingly, the Statute places Young in a “Catch-22” of either having to submit to jurisdiction by appearing at an administrative process without the ability to contest the constitutionality or lack of personal jurisdiction, or face the threat of substantial civil penalties and injury to her livelihood. Young seeks declaratory and injunctive relief against the Defendants arising out of their efforts to enforce the Statute.

JURISDICTION AND VENUE

5. The Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343.

6. Young’s claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, Rules 57 and 65 of the Federal Rules of Civil Procedure, and the general legal and equitable powers of this Court.

7. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Young’s claims occurred in this judicial district.

PARTIES

8. Plaintiff Young is an individual residing in Volcano, California, is a duly licensed Real Estate Broker under the laws of California, and is the owner and operator of an Internet website, www.elist.me, which provides advertising services for individual homeowners who wish to sell their homes on their own.

9. Defendant Dave Heineman (“Heineman”) is the Governor of Nebraska. On March 3, 2010, the Governor approved Legislative Bill 691. Defendant Jon Bruning (“Bruning”) is the Attorney General of Nebraska. The Governor and the Attorney General have broad powers to enforce the State’s statutes. See Neb. Const. Art. IV, § 6; Neb. Rev. Stat. § 84-731. Heineman and Bruning, their employees, agents, and successors in office, are sued in their official capacity.

10. Defendant John A. Gale (“Gale”) is the Secretary of the State of Nebraska and the Chairperson of the Nebraska Real Estate Commission, and as such is charged with supervising and being responsible for the administration of the Commission. Neb. Rev. Stat. § 81-885.07. The Commission is charged with administering the regulation and licensing of Nebraska Real Estate Brokers. Id. at § 81-885.10. Lemon is the Director of the Commission and has the power to issue cease and desist orders, which may become final ten days after issuance. Id. at § 81-885.03. Gale and Lemon, their employees, agents and successors in office, are sued in their official capacity.

THE STATUTE

11. Based on its express language, the Statute now dramatically expands the reach of personal jurisdiction beyond constitutional limits by commanding that only one act that is allegedly subject to Nebraska Revised Statute 81-885.01(2)

(which defines real estate Broker by listing 22 broad categories of actions), is sufficient contact with Nebraska to establish personal jurisdiction over an out-of-state individual.

12. The Statute grants the Director the authority to issue a cease and desist order that becomes final within ten days unless an administrative hearing is requested. Hearings for declaratory orders before the Real Estate Commission that a statute or regulation does not apply to a particular person are governed by the Nebraska Administrative Code, Title 305, Chapter 3. Regulation 003.03D of that chapter specifically and expressly prohibits a person from requesting a declaratory order that a statute or regulation is unconstitutional or that a regulation is invalid.

13. The Statute requires a person to either appear and request a hearing, regardless of whether personal jurisdiction exists that comports with the requirements of due process, or be faced with a final cease and desist order that can then be the basis of fines up to \$1,000.00 per day. Further, any such person appearing in the administrative proceeding is prohibited from requesting a declaratory order that the Statute, and its grant of personal jurisdiction, is unconstitutional. Further still, upon a cease and desist order becoming final, the Statute provides for significant civil penalties against an individual – even if that individual has not had sufficient contacts with the State to allow the proper constitutional exercise of personal jurisdiction.

14. Accordingly, a person subject to a cease and desist order based on the Statute must appear and request a hearing without the ability to request relief regarding the Statute's unconstitutionally overbroad extension of personal jurisdiction to out-of-state individuals who do not have minimum contact with Nebraska or be subject to significant civil penalties.

15. Violation of a cease and desist order and any subsequent civil penalty is required to be reported to the Real Estate Commission in California and would have an adverse and irreversible impact on Young's license in California.

FACTUAL ALLEGATIONS

16. The Statute, on its face, improperly extends personal jurisdiction beyond allowable constitutional limits.

17. The Statute states that one "action shall constitute sufficient contact with the state for the exercise of personal jurisdiction over such person in any action arising out of such action," but with no examination or evidence required regarding the nature, caliber or extent of the action.

18. The Statute includes any "direct or indirect" action with respect to 22 categories of actions.

19. The Statute does not require a finding of proof that an action listed in Nebraska Revised Statute 81.885.01 has actually occurred before allowing the exercise of personal jurisdiction by the Commission.

20. The Statute allows the Commission to exercise personal jurisdiction over an out-of-state individual based upon one alleged direct or indirect action without adhering to or providing the due process protections contained within the 14th Amendment to the United States Constitution.

21. The only remedy available to a person who receives a cease and desist order, pursuant to Nebraska Revised Statute 81.885.03, is to request an administrative hearing which does not allow or provide relief based on a constitutional challenge to the Statute.

22. Accordingly, the Statute requires a person to forego their constitutional protections and appear in a Nebraska administrative proceeding or face potentially severe civil fines.

23. Young is a Real Estate Broker licensed in the State of California. Young is not licensed in the State of Nebraska.

24. Young also operates the Internet website www.elist.me.

25. Young provides homeowners that wish to sell their homes on their own, without the use of a commission-charging realtor, the ability to have their homes advertised, including on certain third-party websites.

26. One or more homeowners in Nebraska have contracted with Young for her advertising services for the homeowner's residence.

27. Young charges a flat fee for this advertisement.

28. Young does not provide any other services to the homeowner regarding the negotiation, sale or closing of any sale. These activities are all handled by the homeowner.

29. Any person seeking information regarding an advertisement is automatically put in contact with the homeowner, not Young.

30. On July 20, 2010, the Commission issued a cease and desist order, CD 2010-005, to Young.¹

31. The cease and desist order specifically references Legislative Bill 691, the ten-day period to request a hearing, and the civil fine of up to \$1,000.00 per day.

32. The cease and desist order refers to advertising real property for sale which is located in the state of Nebraska and Nebraska Revised Statute § 81-885.01(2), but fails to identify which of the 22 actions in the statute are involved (further, 81-885.01(2) does not include the term “advertise”).² Moreover, the cease

¹ See Attached Exhibit A.

² Neb. Rev. Stat. § 81-885.01(2) “Broker means any person who, for any form of compensation or consideration or with the intent or expectation of receiving the same from another, negotiates or attempts to negotiate the listing, sale, purchase, exchange, rent, lease, or option for any real estate or improvements thereon, or assists in procuring prospects or holds himself or herself out as a referral agent for the purpose of securing prospects for the listing, sale, purchase, exchange, renting, leasing, or optioning of any real estate or collects rents or attempts to collect rents, gives a broker's price opinion or comparative market analysis, or holds himself or herself out as engaged in any of the foregoing. Broker also includes any person: (a) Employed, by or on behalf of the owner or owners of lots or other parcels of real estate, for any form of compensation or consideration to sell such real estate or any part thereof in lots or parcels or make other disposition thereof; (b) who auctions, offers, attempts, or agrees to auction real estate; or (c) who buys or offers to buy or sell or otherwise deals in options to buy real estate”

and desist order purports to limit and restrain Young from “advertis[ing] for sale, real property in the State of Nebraska....”

33. Nebraska Revised Statute § 81-885.03, its personal jurisdiction language, and the cease and desist order based upon and issued pursuant to the personal jurisdiction language, is a state action enforced under color of state law and issued under the authority and in the official capacity of Heineman, Bruning, Gale and Lemon.

34. Upon information and belief, Nebraska newspapers and other companies that provide advertising of Nebraska real estate are not licensed under the Nebraska Real Estate Licensing Act.

35. Upon information and belief, the Commission has not required such Nebraska newspapers and other companies that are providing Nebraska advertising of Nebraska real estate to obtain a license under the Nebraska Real Estate Licensing Act.

36. Further, upon information and belief, the Commission has not issued cease and desist orders against such Nebraska newspaper and other companies that are provide advertising of Nebraska real estate.

FIRST CLAIM FOR RELIEF

37. Young realleges and incorporates by reference the allegations contained in paragraphs 1 through 36.

38. By basing personal jurisdiction upon one action, including commanding that one such action constitutes sufficient contacts with Nebraska, the Statute, on its face, violates the Due Process Clause and rights as guaranteed by the Fourteenth Amendment to the United States Constitution, including but not limited to the First Amendment.

SECOND CLAIM FOR RELIEF

39. Young realleges and incorporates by reference the allegations contained in paragraphs 1 through 38.

40. By basing personal jurisdiction upon one action, including commanding that one such action constitutes sufficient contact with Nebraska, the Statute, as applied, violates Young's due process rights as guaranteed by the Fourteenth Amendment to the United States Constitution, including but not limited to the First Amendment and her civil rights.

THIRD CLAIM FOR RELIEF

41. Young realleges and incorporates by reference the allegations contained in paragraphs 1 through 41.

42. By basing personal jurisdiction upon one action, including commanding that one such action constitutes sufficient contacts with Nebraska, the Statute, on its face, violates the limitations imposed on the extension of personal jurisdiction over individuals contained in the United States Constitution.

FOURTH CLAIM FOR RELIEF

43. Young realleges and incorporates by reference the allegations contained in paragraphs 1 through 42.

44. By basing personal jurisdiction upon one action, including commanding that one such action constitutes sufficient contact with Nebraska, the Statute, as applied, violates Young's rights based on limitations imposed on the extension of personal jurisdiction over individuals under the United States Constitution, violates her constitutional equal protection rights as well as her civil rights.

FIFTH CLAIM FOR RELIEF

45. Young realleges and incorporates by reference the allegations contained in paragraphs 1 through 44.

46. By failing to require that adequate notice be given of what action constitutes sufficient contacts with Nebraska to allow the exercise of personal jurisdiction over an individual, the Statute, on its face, violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

SIXTH CLAIM FOR RELIEF

47. Young realleges and incorporates by reference the allegations contained in paragraphs 1 through 46.

48. By failing to give adequate notice of what action constitutes sufficient contacts with Nebraska to allow the exercise of personal jurisdiction over an individual, the Statute, as applied, violates Young's rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution, her constitutional equal protection rights, and her civil rights.

SEVENTH CLAIM FOR RELIEF

49. Young realleges and incorporates by reference the allegations contained in paragraphs 1 through 48.

50. By failing to give adequate notice of what action constitutes sufficient contacts with Nebraska to allow the exercise of personal jurisdiction over an individual, the Statute, on its face, violates the Free Speech rights and protections afforded by the First Amendment of the United States Constitution.

EIGHTH CLAIM FOR RELIEF

51. Young realleges and incorporates by reference the allegations contained in paragraphs 1 through 50.

52. By failing to give adequate notice of what action constitutes sufficient contacts with Nebraska to allow the exercise of personal jurisdiction over

an individual, the Statute, as applied, violates Young's Free Speech rights, the protections afforded by the First Amendment of the United States Constitution, and her civil rights.

NINTH CLAIM FOR RELIEF

53. Young realleges and incorporates by reference the allegations contained in paragraphs 1 through 52.

54. By subjecting out-of-state individuals to the Statute, including its personal jurisdiction provision, and by improperly burdening and/or discriminating against interstate commerce, the Statute violates the Commerce Clause and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

TENTH CLAIM FOR RELIEF

55. Young realleges and incorporates by reference the allegations contained in paragraphs 1 through 54.

56. By causing individuals to guess what one action, direct or indirect, will make them subject to personal jurisdiction under the Statute, the Statute is impermissibly overbroad on its face, thereby violating the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

ELEVENTH CLAIM FOR RELIEF

57. Young realleges and incorporates by reference the allegations contained in paragraphs 1 through 56.

58. By causing individuals to guess what one action, direct or indirect, will make them subject to personal jurisdiction under the Statute, the Statute is impermissibly overbroad as applied to Young, thereby violating the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and her civil rights.

INJUNCTIVE RELIEF

59. Young realleges and incorporates by reference the allegations contained in paragraphs 1 through 58.

60. If the Statute's grant of personal jurisdiction is allowed to stand, Young (as well as other individuals) will be subject to irreparable harm for which no remedy at law exists, including ongoing violations of their constitutional rights, depriving them of their constitutional rights to due process and unconstitutionally restraining their First Amendment free speech rights.

61. Enforcement of the cease and desist order will cause irreparable harm by assessing Young with significant civil penalties, which will have to be reported to the California Real Estate Commission, thereby resulting in irreparable injury to her status, good standing and licensure in California and her right, ability and freedom to earn a living.

62. Pursuant to Neb. Rev. Stat. § 25-21.159, the Nebraska Attorney General has been notified of this proceeding and served with a copy hereof challenging the constitutionality of Neb. Rev. Stat. § 81-885.03.

REQUEST FOR RELIEF

A. That a judgment be entered declaring that the Statute violates the United States Constitution.

B. That a permanent injunction be issued, restraining Defendants, their employees, agents, and successors in office from enforcing the Statute, including against Young; making the cease and desist order issued against Young final; and/or taking any action based upon an alleged violation of the Statute when personal jurisdiction over an out-of-state individual is based on the Statute.

C. That such interim injunctive relief be issued as may be necessary to maintain the status quo pending award of final judgment.

D. That Young be awarded her attorneys' fees and costs pursuant to 42. U.S.C. § 1988.

E. That such other and further relief as the Court deems just and proper be granted.

DATED this 29th day of July, 2010, at Omaha, Nebraska.

PLAINTIFF DESIGNATES LINCOLN, NEBRASKA AS THE PLACE OF TRIAL.

LESLIE RAE YOUNG, Plaintiff

By: s/ Harvey B. Cooper

Harvey B. Cooper, NSBA No. 15035

Of ABRAHAMS KASLOW & CASSMAN LLP

8712 West Dodge Road, Suite 300

Omaha, NE 68114-3419

Phone: (402) 392-1250

Fax: (402) 392-0816

Email: Hcooper@akclaw.com

Attorneys for Plaintiff

VERIFICATION OF COMPLAINT

I, Leslie Rae Young, a citizen of the United States, a resident of Volcano, California, and Plaintiff in the above-captioned matter, hereby declare that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged therein are true and correct.

DATED this _____ of July, 2010.

Leslie Rae Young

SWORN TO and subscribed before me this _____ day of July, 2010.

Notary Public
My Commission Expires: _____

CERTIFICATE OF SERVICE

I hereby certify that on the July 28, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

And I hereby certify that I have mailed by United States Postal Service (and sent by email to Jon Bruning on behalf of himself and the other defendants) the document to the following CM/ECF participants:

Dave Heineman
Governor of Nebraska
c/o Jon Bruning, Attorney General
2115 State Capitol
Lincoln, NE 68509

Jon Bruning
Attorney General
2115 State Capitol
Lincoln, NE 68509

John A. Gale
Secretary of State of Nebraska
c/o Jon Bruning, Attorney General
2115 State Capitol
Lincoln, NE 68509

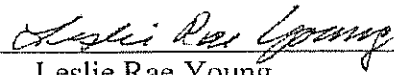
Greg Lemon, Director,
Nebraska Real Estate Commission
1200 "N" Street, Suite 402
Lincoln, NE 68509

s/Harvey B. Cooper #15035

VERIFICATION OF COMPLAINT

I, Leslie Rae Young, a citizen of the United States, a resident of Volcano, California, and Plaintiff in the above-captioned matter, hereby declare that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged therein are true and correct.

DATED this 28th of July, 2010.



Leslie Rae Young

Sworn to and subscribed before me this 28th day of July, 2010.

Notary Public
My Commission Expires: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Amador

On 7-28-2010 before me, E.M. Hardy - Notary Public

Date

Here Insert Name and Title of the Officer

personally appeared Leslie Rae Young

Name(s) of Signer(s)

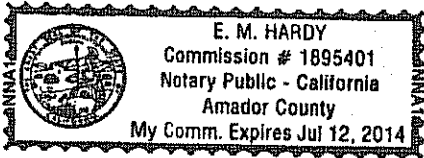
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature E.M. Hardy - Notary Public
Signature of Notary Public

Place Notary Seal Above



OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

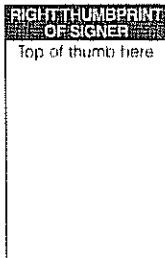
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

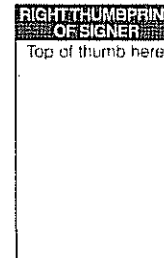
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____