

IN THE MARION COUNTY SUPERIOR COURT
CAUSE NO.OFFICE OF THE INDIANA
ATTORNEY GENERAL,

Plaintiff,

v.

HERBERT WHALEN;

MBNS, LLC;

MBNS INVEST, LLC; AND

MY BRICKS AND STICKS, LLC
(voluntarily dissolved);

Defendants.

**COMPLAINT FOR PERMANENT
INJUNCTIVE RELIEF, CIVIL
PENALTIES, COSTS, AND JURY
DEMAND****I. INTRODUCTION**

1. Defendant Herbert (“Herb”) Whalen has pled guilty to a federal crime related to a 2018 conspiracy to defraud real estate investors.¹

2. Nevertheless, ahead of his upcoming sentencing hearing—and in violation of his Pretrial Release Agreement—Defendant Whalen has continued his previous business practices, albeit under a different name: “Herb Francis.”

3. After Defendant Whalen’s real estate license has been permanently revoked, Whalen has owned and/or operated multiple companies which sell,

¹ See *USA v. Whalen*, 2:19-cr-00839-MCA-1, U.S. District Court, District of New Jersey.

remediate, and manage Indianapolis real estate for other investors, for compensation.

4. Defendant Whalen's promises to rehab properties on behalf of investors have resulted in fraudulent charges, incomplete scopes of work, and financial losses to those investors.

5. Defendant Whalen's continued unlawful business practices and disregard for both Indiana law pose an immediate, irreparable harm to consumers both inside and outside of Indiana.

6. The State of Indiana, by Attorney General Todd Rokita and Deputy Attorneys General Chase M. Haller and Timothy M. Weber, commence this civil action seeking permanent injunctive relief, civil penalties, and costs under the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1 *et seq.* and the Indiana Home Loans Practices Act, Ind. Code § 24-9 *et seq.*

II. PARTIES AND VENUE

7. Plaintiff, the State of Indiana, is authorized to bring this action under Ind. Code § 24-5-0.5-4(c) and Ind. Code § 4-6-12-3(a)(3)(B), and Ind. Code §24-9, *et seq.* The Attorney General brings this action in the public interest and pursuant to his powers *parens patriae* in order to hold Defendants accountable and to prevent further consumer harm.

8. Defendant Herbert Whalen ("Whalen") is a natural person and resident of Marion County, Indiana, residing at 1238 Cottage Avenue, Indianapolis,

IN 46203. Whalen is an agent or principal of each entity named herein as a Defendant.

9. My Bricks and Sticks, LLC is an Indiana limited liability company that was established on August 5, 2022 and voluntarily dissolved on November 13, 2023. My Bricks and Sticks, LLC is not a licensed broker company in the State of Indiana.

10. MBNS, LLC is an Indiana limited liability company with a registered address of 1238 Cottage Ave, Indianapolis, IN, 46203 and a registered agent of Joseph P. Dillon, and a designated manager of Natalie Bastin, the now-deceased spouse of Whalen, organized on October 10, 2023. MBNS, LLC is not a licensed broker company in the State of Indiana.

11. MBNS Invest, LLC, is an Indiana limited liability company with a registered address of 1530 Barth Ave, Indianapolis, IN, 46203, and a registered agent of “Natalie Bastin” [sic], organized on December 7, 2023. MBNS Invest, LLC is not a licensed broker company in the State of Indiana.

12. Upon information and belief, “MBNS” is an abbreviation of “My Bricks And Sticks,” and MBNS, LLC and MBNS Invest, LLC are functionally successor entities to My Bricks and Sticks, LLC. All three entities are the alter ego of one another, bearing joint and several liability for their actions alleged herein. They are all the instrumentalities of fraud perpetuated by Defendant Herbert Whalen and Natalie Bastin.

13. My Bricks and Sticks, LLC, MBNS, LLC, and MBNS Invest, LLC all constitute a common enterprise run by Defendant Whalen, which provides “in-house” residential property sales, remediation, and management to investors.

14. Venue of this action is proper in Marion County, Indiana. Pursuant to Ind. T.R. 75(A)(1), Marion County is the preferred venue because it is the home of Defendant Whalen and principal place of business of all Defendants.

III. FACTS

A. Whalen’s revoked real estate salesperson license

15. On March 24, 1995, the Indiana Real Estate Commission issued Bert Whalen a real estate salesperson license (number SP39500817).

16. Whalen submitted a renewal for his online real estate salesperson license on December 31, 2009.

17. However, when Whalen applied for a renewal, he failed to disclose five criminal convictions that had occurred since the Real Estate Commission initially granted his license in 1995, including:

- a. operating while intoxicated, a class C misdemeanor;
- b. reckless driving, a class B misdemeanor;
- c. operating a motorboat while intoxicated, a class C misdemeanor; and
- d. operating a motorboat with a suspended driver’s license, a class A misdemeanor; and
- e. operating a vehicle while intoxicated, endangering a person, a class A misdemeanor.

18. On December 25, 2015, Deputy Attorney General Samuel J. Dayton filed an administrative complaint against Whalen before the Indiana Real Estate Commission in cause number IREC 15-56 alleging renewal fraud and multiple instances of professional misconduct.

19. On December 18, 2017, an Administrative Law Judge Panel of the Indiana Real Estate Commission issued an order finding that Whalen had:

- a. committed renewal fraud in not disclosing convictions for crimes that were “harmful to the public”;
- b. knowingly violated Indiana law by managing a company that managed real estate without a valid license; and
- c. “engaged in unprofessional conduct,” which had rendered him “unfit to practice due to professional incompetence.”²

20. On January 24, 2018, Whalen’s license was permanently revoked by the Commission in a unanimous Final Order and Whalen was ordered to pay \$1,300.00 in consumer restitution.

B. Oceanpointe: Whalen’s Alleged Criminal Conspiracy to Defraud Investors

21. At relevant times before his federal indictment, Whalen was the owner of Oceanpointe Property Management, Oceanpointe Investments Limited, as well as the manager of Oceanpointe Holdings, LLC (hereinafter collectively referred to as “Oceanpointe”).

² Final Order Affirming Administrative Law Judge Panel’s Order, 2015 IREC 0056.

22. Through Oceanpointe, Whalen sold properties to investors and rented properties through Oceanpointe to Indiana tenants.

23. On November 20, 2019, the United States Attorney for the District of New Jersey filed a sealed indictment accusing Whalen of “knowingly and intentionally conspir[ing] and agree[ing] with others to devise a scheme and artifice to defraud, and to obtain money and property from multiple victims via wire communications in violation of 18 U.S.C. § 1343” through his dealings under Oceanpointe.³

24. Whalen’s Pretrial Release Agreement provided that Whalen could not violate any federal, state, or local law while on release.

25. The indictment alleged that Whalen engaged in a conspiracy to enrich himself by misrepresenting—and subsequently hiding—the substandard conditions at the rental properties he sold and managed, by:

- a. Sending a “Welcome Pack” including property management agreements and promising repairs and rehabilitation which were subsequently never completed.
- b. Directing employees to draft fake leases for vacant properties; and
- c. Comingling tenant rent payments to hide the vacancy of various properties.

26. According to the indictment, Whalen’s deceptions in connection with Oceanpointe allegedly cost multiple victims millions of dollars in losses.

³ See **Exhibit A**.

27. On March 1, 2022, Whalen entered into a plea agreement with the United States Attorney for the District of New Jersey on March 1, 2022, pleading guilty to the first count of the indictment, a violation of 18 U.S.C. § 1349, carrying a maximum prison sentence of twenty (20) years.

28. Under the agreement, pursuant to 18 U.S.C. § 3583, Whalen is permitted to be placed on supervised release, which if violated, could carry an additional two years' imprisonment to any other prison term imposed.

29. Whalen is set for a sentencing hearing on June 5, 2024, in Newark Courtroom 4A before Judge Madeline Cox Arleo.

30. Upon information and belief, Whalen, through a network of LLCs utilized to disguise his involvement, and using a fictitious name, has openly continued to defraud and mislead investors.

C. Whalen's unlicensed sale and property management of 1029 Winfield Avenue Property

31. Chelsea Kopacz, an Oregon real estate investor interested in purchasing Indianapolis rental property, was introduced to Whalen through a mutual connection on or around November 2021.

32. In interactions with Ms. Kopacz, Whalen held himself out as "Herb Francis," to obscure his identity and past criminal misdeeds.

33. Ms. Kopacz understood "Herb Francis" to operate a comprehensive property rental operation that completed everything "in-house," including the acquisition of investment property, its repair and rehab, and rental of the property to tenants, including ongoing management, for compensation.

34. In November through December 2021, Whalen connected Kopacz with a lending agent with whom he had previously worked, Shere Clark from Longhorn Investments, Ltd., a Texas company with an Indianapolis office to facilitate a property sale.

35. On March 1, 2022, Ms. Kopacz signed a contract for the purchase of the property at 1029 Winfield Avenue, Marion County, Indiana, 46222 for the sum of \$84,900 in “hard money.”

36. The manager of My Bricks and Sticks, LLC, Natalie Bastin, signed the contract on March 11, 2022.

37. On August 15, 2022, Ms. Kopacz signed a property management agreement with My Bricks and Sticks, LLC to collect rents, identify tenants, and maintain the property in exchange for ten (10) percent of annual rents.

38. Natalie Bastin signed this agreement on August 16, 2022.

39. During this property management agreement, Ms. Kopacz communicated directly with Whalen via text message.

40. Despite Whalen’s representations that the property would be remediated, the 1029 Winfield Avenue Property quickly ran afoul with the Marion County Public Health Department (“MCPHD”).

41. An August 4, 2023, inspection conducted by the MCPHD identified four violations, including: (1) “deteriorated, cracked, broken or unsafe” exterior steps; (2) “baseboard heater(s) in poor repair”; (3) a refrigerator in poor repair or missing; and (4) a roach infestation throughout the dwelling.

42. The MCPHD inspected the premises again on October 17, 2023, and concluded all four violations were unresolved.

43. The MCPHD inspected the Winfield Avenue Property again on December 7, 2023, and concluded all four violations were still unresolved; however, the inspector also concluded that the back porch electric service box was “inadequate and dangerous.”

44. A subsequent MCPHD inspection on January 12, 2024 finally revealed that four of the five violations were resolved, but the damage to the exterior steps was unremedied.

45. The 1029 Winfield Avenue property took five inspections and several months to come into compliance during Defendant Whalen’s management of the property.

D. Whalen’s unlicensed property management of the 1742/1744 Laurel Street Property

46. On March 5, 2023, Chelsea Kopacz purchased the duplex property at 1742 and 1744 Laurel Street, Marion County, Indianapolis, Indiana 46205 for \$70,000.

47. Natalie Bastin also signed this contract, however, this time explicitly on behalf of “My Bricks & Sticks.”

48. In furtherance of these agreements, Whalen communicated directly with Ms. Kopacz via text, providing the routing and accounting number of My Bricks and Sticks, LLC on April 20, 2023.

49. On June 28, 2023, Ms. Kopacz signed a property management agreement with Bastin on behalf of “MBNS” for My Bricks and Sticks to manage the 1742 Laurel Street unit, including its maintenance responsibilities, tenant selection, rent collection, evictions, and other matters in exchange for ten (10) percent of annual rents.

50. No formal property management agreement existed between Defendants and Ms. Kopacz regarding the 1744 Laurel Street property.

51. Nevertheless, Defendant Whalen’s agent, Dylan Faulkner, rented the 1744 Laurel Street unit to a tenant.

52. Contrary to the property rehabilitation agreement, only one of the duplex’s water heaters were replaced, leaving the 1744 Laurel Street tenant both without heat and running water.

53. As a result, the Marion County Public Health Department initiated an emergency health case, and sought civil enforcement, issuing a notice of violation to Ms. Kopacz threatening up to \$2,500.00 in fines and costs.

54. Following these difficulties, Ms. Kopacz ended her property management agreements with Defendant Whalen on February 23, 2024.

XI. CAUSES OF ACTION

55. Under the Real Estate Broker Licensing Act, Defendants must have a broker license to legally “sell, buy, trade, exchange, option, lease, rent, manage, list, or appraise real estate” in exchange for consideration. Ind. Code § 25-34.1-3-2(a).

56. The property management of multiple properties for consideration conducted by Defendants Whalen, My Bricks and Sticks, LLC, and MBNS, LLC, violates the Indiana Home Loan Practices Act.

57. Given that the Defendants are mere alter egos of one another and that the limited liability companies were used as instrumentalities of fraud, joint and several liability is appropriate as to each count.

**COUNTS I THROUGH II: UNLICENSED PROPERTY MANAGEMENT IN
VIOLATION OF THE HOME LOAN PRACTICES ACT
IC § 24-9
(All Defendants)**

58. The Home Loan Practices Act (HLPa) prohibits individuals from “engag[ing] in, or solicit[ing] to engage in, a real estate transaction or a mortgage transaction without a permit or license required by law.” Ind. Code § 24-9-3-7(c)(4).

59. Under the HLPa, a “real estate transaction” means “the sale or lease of any legal or equitable interest in real estate” which is “(1) located in Indiana; (2) upon which there is a constructed to intended to be constructed a dwelling; and (3) that is classified as residential for property tax purposes.” Ind. Code § 24-9-3-7(b).

60. Defendants engaged in two “real estate transactions” under the HLPa when they leased legal interests in real estate at two properties to tenants on behalf of Ms. Kopacz, pursuant to a property management agreement in which they obtained compensation.

61. Upon information and belief, Defendants engaged in dozens more illegal and unlicensed real estate transactions that have not yet been discovered by Plaintiff.

62. **Count I:** Defendants violated the HLPa by managing the 1029 Winfield Avenue property on behalf of Ms. Kopacz in exchange for ten (10) percent of annual rents without the requisite license required by law.

63. **Count II:** Defendants violated the HLPa by managing the 1742/1744 Laurel Street property on behalf of Ms. Kopacz in exchange for ten (10) percent of annual rents without the requisite license required by law.

**COUNTS III THROUGH VI: DECEPTIVE ACTS IN VIOLATION OF THE
HOME LOAN PRACTICES ACT IC § 24-9
(All Defendants)**

64. Plaintiff re-alleges and incorporates by reference the foregoing.

65. The Home Loan Practices Act (HLPa) prohibits individuals from a person from “[e]ngag[ing] in a deceptive act in connection with a . . . real estate transaction.”

66. A “deceptive act” under the HLPa means when a person “knowingly or intentionally” either “makes a material misrepresentation” or “conceals material information regarding the terms or conditions of the transaction.” Ind. Code § 24-9-2-7(a)(1).

67. By concealing his identity and using the pseudonym “Herb Francis” in communications, Defendant Whalen knowingly or intentionally made a material representation in all his transactions with Ms. Kopacz.

68. **Count III:** Defendant Whalen made material misrepresentations in violation of the HLPa by concealing and/or misrepresenting his identity in the sale, rehabilitation, and subsequent property management agreement of the 1029 Winfield Avenue property between Ms. Kopacz and My Bricks and Sticks, LLC. Whalen likewise impliedly misrepresented his ability to manage the property as such an act was prohibited by law.

69. **Count VI:** Defendant Whalen made material misrepresentations in violation of the HLPa by concealing his identity in the sale and subsequent property management agreement of the 1742/1744 Laurel Street property between Ms. Kopacz and My Bricks and Sticks, LLC. Whalen likewise impliedly misrepresented his ability to manage the property as such an act was prohibited by law.

WHEREFORE, Plaintiff, the State of Indiana, respectfully requests the following relief in connection with **Counts I–VI**:

- a. A judgment including the imposition of a civil penalty of \$10,000.00 as to each violation alleged herein pursuant to Ind. Code § 24-9-8-3(a)(4) as to Defendant Whalen and to Defendant My Bricks and Sticks, LLC and its successor entities, MBNS Invest, LLC and MBNS, LLC. Given his prior illegal conduct, Plaintiff requests maximum civil penalties totaling \$40,000.00.
- b. A judgment including restitution in the form of disgorgement of all property management fees to Ms. Kopacz and other similarly situated

investors pursuant to Ind. Code § 24-9-8-3(a)(2) as to Defendant Whalen and to Defendant My Bricks and Sticks, LLC and its successor entities, MBNS Invest, LLC and MBNS, LLC.

- c. Reimbursement the Office of the Attorney General for the reasonable costs of the Attorney General's investigation and prosecution of this case as to all Defendants, pursuant to Ind. Code § 24-9-8-3(a)(3).
- d. Injunctive relief, *infra*; and
- e. All other just and proper relief

XII. Injunctive Relief

In addition to the foregoing, the Plaintiff, the State of Indiana, respectfully requests the Court issue a permanent injunction against Defendants pursuant to the authority of Ind. Code § 24-5-0.5-4(c)(1) and Ind. Code § 24-9, *et seq.* to restrain future illegal conduct, including the following:

- a. A preliminary and permanent injunction prohibiting all Defendants and any affiliate or proxy entities from engaging in real estate transactions without licensure required by Indiana law;
- b. An Order requiring expedited discovery so that additional victims may be identified.

A jury demand is made for all matters so triable.

Respectfully submitted,

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