

DOCKET

08-CRI-01

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STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

CALIFORNIA LIVING & ENERGY (a
division of William Lilly & Associates, Inc.)
and DUCT TESTERS, INC.,

Complainants,

vs.

MASCO CORPORATION and
ENERGYSENSE, INC.,
Respondents.

Docket Number 08-CRI-01

DECLARATION OF VICKI RULE IN SUPPORT OF COMPLAINT BY CALIFORNIA LIVING ENERGY AND DUCT TESTERS, INC.

Hearing Date: March 17, 2009

I, VICKI RULE, declare:

1. I am an individual and, during all time periods relevant to this declaration, was the Purchasing Agent of Del Valle Capital Corp.

2. In or about April of 2007, a meeting was held at my office for Del Valle Builders at their Isleton, California project. Also in attendance at that meeting were Evonne Revitt of the Pacific Gas and Electric Company, David Hegarty of Duct Testers, Inc. and Jaime Padrone representing Energy Sense, Inc. The purpose of this meeting was to discuss the CF1R/T-24 requirements for the Del Valle project to meet Energy Star and California Code requirements as well as those called for under the PG&E incentive program.

3. During our meeting, the issue of EnergySense's connection with Masco was brought up. Sacramento Building Products, another Masco entity, was providing all of the insulation to our project, as was the case with a significant portion of the projects I was involved with. In fact, Mr. Padrone had originally been introduced to me by Michael O'Leary from Sacramento Building Products.

1 4. During our meeting, Mr. Hegarty expressed the opinion that having EnergySense
2 provide HERS ratings of installations carried out by Sacramento Building Products may violate
3 the conflict of interest regulations covering HERS Raters. Mr. Padrone became strangely enraged
4 and animated at the suggestion of a conflict, so much so that I nearly terminated the meeting. I
5 was able to keep the meeting going forward, although Mr. Padrone remained extremely angry
6 throughout.

7
8 5. I knew from previous projects that Masco was heavily involved in several phases
9 of the construction process. I was using Masco-companies for insulation, gutters, doors, paint,
10 fireplaces and even framing on two of the model homes. Even though Mr. Padrone was working
11 with EnergySense at this time, whenever I communicated with him by e-mail, I was both sending
12 and receiving messages via a Masco e-mail address. Much of the work that the Masco entities
13 were doing for me were done in conjunction with Masco's "Environments for Living" program.
14 Both the installation and inspection of energy efficiency measures were all part of a "package"
15 that had been sold to me by Sacramento Building Products. In fact, when I had problems with
16 any of the other trades provided by Masco subsidiaries, Jaime is who I would frequently contact
17 to have the matter corrected.

18
19 6. I was concerned about the potential for conflict of interest issues. I did not want
20 the Ratings done by EnergySense to be deemed invalid, thereby requiring re-inspections at
21 \$200+ per home. I voiced these concerns to Mr. Padrone. He told me that I had no risk of that
22 taking place as EnergySense could not be testing their own work as EnergySense was not in any
23 way affiliated with Masco. He also represented that he had a letter from Bill Pennington of the
24 C.E.C. stating there was no conflict with EnergySense inspecting installations by other Masco
25 entities. I have no specific recollection of Jaime ever sending me a copy of this letter from Mr.
26 Pennington.

27 7. Based upon these assurances from Mr. Padrone, I went ahead and used
28 EnergySense for the HERS testing.

1 The facts set forth above are personally known to me and I have first hand knowledge of
2 the same, and if called as a witness I can and will competently testify thereto under oath.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct, and that this declaration is executed on March 27, 2009 at Modesto,
5 California.

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7 VICKI RULE
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PROOF OF SERVICE

I, SHERRIE SHAMGOCHIAN, declare:

I am a citizen of the United States and a resident of the County of Stanislaus, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1014 – 16th Street, Modesto, California 95354.

I am readily familiar with the business practice for collection and processing of correspondence, and on March 27, 2009 I served:

**DECLARATION OF VICKI RULE IN SUPPORT OF COMPLAINT BY
CALIFORNIA LIVING ENERGY AND DUCT TESTERS, INC.**

in the following manner and addressed as set forth below;

xx **Via United States Postal Service:** Such correspondence was enclosed in a sealed envelope with postage thereon fully prepaid, addressed as stated below. I caused such envelope to be deposited in the U.S. Mail at Modesto, California through the firm's ordinary course of business.

PLEASE SEE ATTACHMENT

xx On March 16, 2009 I served the enclosed document, filed electronically with the State of California Energy Resources Conservation and Development Commission and e-mailed to Dennis Beck and Steven H. Frankel as follows:

docket@energy.state.ca.us

Steven H. Frankel
Sonnenschein Nath & Rosenthal LLP
sfrankel@sonnenschein.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and if called could truthfully testify thereto.

Dated: March 27, 2009 at Modesto, California.


SHERRIE SHAMGOCHIAN

1 Carol A. Davis
2 CHEERS Legal Counsel
3 3009 Palos Verdes Drive West
4 Palos Verde Estates, CA 90274

5 Certified Energy Consulting
6 Attn: John Richau, HERS Rater
7 4782 N. Fruit Avenue
8 Fresno, CA 93705

9 California Certified Energy Rating &
10 Testing Services (CalCERTS)
11 Attn: Mike Bachand
12 31 Natoma Street, Suite 120
13 Folsom, CA 95630

14 California Building Performance
15 Contractors Association (CBPCA)
16 Attn: Randel Riedel
17 1000 Broadway, Suite 410
18 Oakland, CA 94607

19 California Home Energy Efficiency
20 Rating System (CHEERS)
21 Attn: Robert Scott
22 20422 Beach Blvd.
23 Huntington Beach, CA 92648

24 Duct Testers, Inc.
25 Attn: Dave Hegarty
26 P.O. Box 266
27 Ripon, CA 95366

28 Energy Inspectors
Attn: Galo LeBron, CEO
1036 Commerce Street, Suite B
San Marcos, CA 92078

ConSol
Attn: Mike Hodgson
7407 Tam O'Shanter Drive
Stockton, CA 95310-3370

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Dennis L. Beck
Senior Staff Counsel
California Energy Commission
1516 Ninth Street, MS-14
Sacramento, CA 95814

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STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

CALIFORNIA LIVING & ENERGY (a
division of William Lilly & Associates, Inc.)
and DUCT TESTERS, INC.,

Docket Number 08-CRI-01

Complainants,

**DECLARATION OF DAVIDE HEGARTY
IN SUPPORT OF COMPLAINT BY
CALIFORNIA LIVING AND ENERGY
AND DUCT TESTERS, INC.**

vs.

Hearing Date: March 17, 2009

MASCO CORPORATION and
ENERGYSENSE, INC.,
Respondents.

I, DAVID HEGARTY, declare:

1. I am an individual and the President of Complainant DUCT TESTERS, INC.
2. In April of 2007, I was attending a business meeting in the office of Del Valle Builders at their Isleton, California project. Also in attendance at that meeting were Evonne Revitt of the Pacific Gas and Electric Company, Vicki Rule, the Purchasing Agent for Del Valle, and Jamie Padrone, representing EnergySense. The purpose of this meeting was to discuss the CF1R/T-24 requirements for the Del Valle project so as to meet Energy Star and California Code requirements as well as those called for under the PG&E incentive program.
3. During our meeting, Mr. Padrone began to "upsell" Del Valle on the services Masco and EnergySense could provide. Ms. Rule had previously advised me Mr. Padrone had "cut her a good deal on Masco and Masco related services" and confirmed that Mr. Padrone had personally sold Del Valle both the insulation and the HERS testing on her project.

1 4. During this meeting, I advised Ms. Rule that, in my opinion, Masco and Energy
2 Sense may be in violation of the conflict of interest provisions contained in Title 20 of the
3 California Code of Regulations because both the installation and the HERS inspections were
4 being carried out by two Masco-owned companies.

5 5. Mr. Padrone disagreed with this opinion. In support of his position that there was
6 no conflict, Mr. Padrone told those in attendance that he had, in his office, a letter signed by Bill
7 Pennington. In this letter, Mr. Padrone claimed that Mr. Pennington, on behalf of the California
8 Energy Commission, had provided written approval for EnergySense to carry out HERS ratings
9 under Title 24 for installations carried out by other Masco-owned entities. Mr. Padrone then
10 offered to provide a copy of the Pennington letter to Ms. Rule.

11 6. Because of my previous communications with the California Home Energy
12 Efficiency Rating Service (CHEERS) regarding a possible investigation of this matter, I was
13 relatively certain no such letter existed. I invited Mr. Padrone to produce the letter from Mr.
14 Pennington.. He agreed to do so when he returned to his office. In order to expedite the process, I
15 asked Mr. Padrone to call his office and have the letter faxed directly to the to the Del Valle
16 office while we were all there. Mr. Padrone advised us that he would be unable to do so as there
17 was no one at his office at that time. Ms. Rule agreed to provide Mr. Padrone additional time to
18 return to his office so as to provide her with the authorization letters from the CEC.
19

20 7. I never received copies of the alleged CEC authorization letters and have never
21 been advised by Ms. Rule that such a letter from Mr. Pennington had ever been received.

22 The facts set forth above are personally known to me and I have first hand knowledge of
23 the same, and if called as a witness I can and will competently testify thereto under oath.
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1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct, and that this declaration is executed on March 27, 2009 at Modesto,
3 California.

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5 DAVID HEGARTY
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I am a citizen of the United States and a resident of the County of Stanislaus, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1014 – 16th Street, Modesto, California 95354.

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Sonnenschein Nath & Rosenthal LLP
sfrankel@sonnenschein.com

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Dated: March 27, 2009 at Modesto, California.


SHERRIE SHAMGOCHIAN

1 Carol A. Davis
2 CHEERS Legal Counsel
3 3009 Palos Verdes Drive West
4 Palos Verde Estates, CA 90274

5 Certified Energy Consulting
6 Attn: John Richau, HERS Rater
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