

FILED

10 APR 06 PM 2:12

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 06-2-35308-1 SEA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

ROBERTO RODRIGUEZ,

Plaintiff,

v.

WINDERMERE REAL ESTATE/WALL
STREET, INC., et al.,

Respondents.

NO. 06-2-35308-1 SEA

NOTICE OF APPEAL TO COURT OF
APPEALS, DIVISION ONE

Defendants Windermere Real Estate/Wall Street, Inc. and Sara Thompson seek review by the Court of Appeals, Division I, of the Judgment and Order identified and set forth below:

1. Judgment dated February 22, 2010;
2. Amended Order Awarding Attorneys' Fees and Costs dated February 22, 2010;
3. Order Amending Order of January 27, 2010 dated March 8, 2010;
4. 2nd Amended Judgment dated March 8, 2010 and
5. Order on Motion for Reconsideration dated March 18, 2010;

Copies are attached to this notice.

DATED this 5th day of April, 2010.

DEMCO LAW FIRM, P.S.

By [Signature]
Matthew F. Davis WSBA#20939
Attorneys for Defendants

Attorneys for Plaintiff
Scott A.W. Johnson and Aviva Kamm
Stokes Lawrence, P.S.
800 Fifth Avenue, Suite 4000
Seattle, Washington 98104-3179

PROOF OF SERVICE

I, Leslie Rothbaum, am over the age of 18 years, and based on my personal knowledge,
state as follows:

On April 6, 2010, I caused true and correct copies of the document listed below to be
served on the persons listed below through King County Superior Court E-filing service:

LIST OF DOCUMENTS:

Notice of Appeal to Court of Appeals, Division One

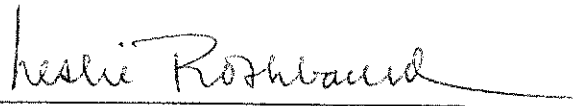
LIST OF PERSONS TO WHOM DOCUMENTS WERE SENT:

Scott A.W. Johnson and Aviva Kamm
STOKES LAWRENCE, P.S.
800 Fifth Avenue, Suite 4000
Seattle, WA 98104-3179

I certify, under penalty of perjury, under the laws of the State of Washington, that the
foregoing is true and correct.

Dated this 6th day of April, 2010, at Seattle, Washington.

DEMCO LAW FIRM, P.S.


Leslie Rothbaum
Paralegal

FILED

HONORABLE SUZANNE BARNETT

FEB 23 PM 3:05

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

IN THE SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

ROBERTO RODRIGUEZ,

Plaintiff,

v.

WINDERMERE REAL ESTATE/WALL
STREET, INC., a Washington Corporation; and
SARA THOMPSON and JOHN DOE
THOMPSON, and the marital community
comprised thereof,

Defendants.

Case No.: 06-2-35308-1SEA

JUDGMENT [~~PROPOSED~~]

JUDGMENT SUMMARY NO. 1

Judgment Creditor:	Roberto Rodriguez
Judgment Creditor's Attorney:	Scott A.W. Johnson
Judgment Debtor:	Windermere Real Estate/Wall Street, Inc. and Sara and John Doe Thompson, Jointly and Severally
Principal Amount:	\$12,338.92
Interest Owed on Principal:	\$8,841.43 (at 18% through January 22, 2010)
Attorneys Fees	\$ 106,861
Costs	\$ 2,976.02
TOTAL:	\$ 131,017.37

2-22-10

JUDGMENT [PROPOSED] - 1

18168-001 \ 484293.doc

ORIGINAL

STOKES LAWRENCE, P.S.
800 FIFTH AVENUE, SUITE 4000
SEATTLE, WASHINGTON 98101-3100

JUDGMENT SUMMARY NO. 2

Judgment Creditor:	Roberto Rodriguez
Judgment Creditor's Attorney:	Scott A.W. Johnson
Judgment Debtor:	Sara and John Doe Thompson
Principal Amount:	\$66,283.53
Interest Owed on Principal:	\$33,386.83 (at 12% through January 22, 2010)
Attorneys Fees	\$56,043
Costs	\$1,923.43
TOTAL:	\$157,636.79

2-22-10

JUDGMENT

This matter comes before the Court on Roberto Rodriguez's Motion for Entry of Judgment. Based on the Court's oral ruling of November 19, 2009, its Findings of Fact and Conclusions of Law entered January 11, 2010, its Order on Attorneys' Fees and Costs entered January 27, 2010 ^{and AMENDED 2/22/10,} and its review of the other pleadings and files of record in this matter, NOW THEREFORE,

2-22-10

IT IS HEREBY ORDERED that Judgment shall be entered in favor of plaintiff Roberto Rodriguez and against defendants Windermere Real Estate/Wall Street, Inc., and Sara and John Doe Thompson jointly and severally in the amounts set forth in the Judgment Summary No. 1 appearing above, which is incorporated herein by reference. Interest shall accrue on all sums due (both the principal judgment and the award of attorneys' fees and costs) at the rate of 18% per annum, which is the contractual rate from the Broker/Sales Associate Agreement.

IT IS FURTHER HEREBY ORDERED that Judgment shall be entered in favor of plaintiff Roberto Rodriguez and against defendant Sara and John Doe Thompson in the amounts set forth in the Judgment Summary No. 2 appearing above, which is incorporated herein by reference. Interest shall accrue on all sums due (both the principal judgment and the award of attorneys' fees and costs) at the statutory rate of 12% per annum.

1 DATED this 22 day of February, 2010.

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4 
JUDGE SUZANNE BARNETT

5 Presented by:

6 STOKES LAWRENCE, P.S.

7
8 By: 

Scott A.W. Johnson (WSBA #15543)

9 Aviva Kamm (WSBA #37199)

10 Attorneys for Plaintiff Roberto Rodriguez

11 Approved as to form;
12 Notice of Presentment Waived

13 DEMCO LAW FIRM, P.S.

14
15 By: _____

Matthew Davis (WSBA #20939)

16 Attorney for Defendants
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FILED

HONORABLE SUZANNE M. BARNETT

2010 FEB 23 PM 3:05

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE WA

IN THE SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

ROBERTO RODRIGUEZ,

Plaintiff,

v.

WINDERMERE REAL ESTATE/WALL
STREET, INC., a Washington Corporation;
and SARA THOMPSON and JOHN DOE
THOMPSON, and the marital community
comprised thereof,

Defendants.

Case No.: 06-2-35308-1SEA

AMENDED ORDER AWARDING
ATTORNEYS' FEES AND COSTS

In this case, on January 27, 2010, the court entered an Order Awarding Attorneys' Fees and Costs to Plaintiff. The court entered the order as "unopposed." Defendants notified the court that they had, in fact, timely filed responsive pleadings. The court reconsidered the January 27 order in light of the responsive and reply papers previously inadvertently overlooked.

After a thorough review of the arguments of all counsel, the court makes this revised order and signs, this date, a judgment in conformity with this AMENDED order.

I. FINDINGS OF FACT

1. The court affirms findings of fact numbered 1-5, 7-12.
2. The court withdraws the finding of fact numbered 6.

3. The court expressly finds that real estate commissions, the source of which is a third party rather than the broker, do not constitute wages or salary.

II. CONCLUSIONS OF LAW

1. Mr. Rodriguez is not entitled to an award of attorneys' fees and costs under RCW 49.48.030.


2. Mr. Rodriguez is entitled to an award of attorneys' fees and costs against Windermere under RCW 4.84.330.

3. Mr. Rodriguez is entitled to an award of attorneys' fees and costs against Ms. Thompson on the equitable ground of breach of fiduciary duty to Mr. Rodriguez, her sole partner in their joint real estate ventures.

4. The court affirms its award of attorneys' fees and costs as stated in the order dated January 27, 2010.

IT IS SO ORDERED.

DATED this 22 day of February, 2010.


JUDGE SUZANNE M. BARNETT

HONORABLE SUZANNE BARNETT

RECEIVED

MAR 12 2010

STOKES LAWRENCE, P.S.

IN THE SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

ROBERTO RODRIGUEZ,

Plaintiff,

v.

WINDERMERE REAL ESTATE/WALL
STREET, INC., a Washington Corporation; and
SARA THOMPSON and JOHN DOE
THOMPSON, and the marital community
comprised thereof,

Defendants.

Case No.: 06-2-35308-1SEA

~~PROPOSED~~ ORDER AMENDING
ORDER OF JANUARY 27, 2010

THIS MATTER came before the Court on Plaintiff's motion under CR 60(a). The Court's Order of January 27, 2010 contained clerical errors in that it awarded a lodestar multiplier of 1.5 but did not calculate that multiplier in stating the amount of the fees awarded. The Order is hereby amended as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Windermere and Ms. Thompson are jointly and severally liable to Mr. Rodriguez for attorneys' fees of \$164,755.53, accruing interest at the statutory rate of 12% from the date of this order (January 27, 2010).

[PROPOSED] ORDER AMENDING ORDER OF JANUARY 27, 2010 - 1
18168-001 \ 504276.doc

COPY

STOKES LAWRENCE, P.S.
800 FIFTH AVENUE, SUITE 4000
SEATTLE, WASHINGTON 98104-3179
(206) 626-6000

ORIGINAL

HONORABLE SUZANNE BARNETT

RECEIVED

MAR 12 2010

STOKES LAWRENCE, P.S.

IN THE SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

ROBERTO RODRIGUEZ,

Plaintiff,

v.

WINDERMERE REAL ESTATE/WALL
STREET, INC., a Washington Corporation; and
SARA THOMPSON and JOHN DOE
THOMPSON, and the marital community
comprised thereof,

Defendants.

Case No.: 06-2-35308-1SEA

2ND AMENDED
JUDGMENT [~~PROPOSED~~]

[Signature]
3-8-10

JUDGMENT SUMMARY NO. 1

Judgment Creditor:	Roberto Rodriguez
Judgment Creditor's Attorney:	Scott A.W. Johnson
Judgment Debtor:	Windermere Real Estate/Wall Street, Inc. and Sara and John Doe Thompson, Jointly and Severally
Principal Amount:	\$12,338.92
Interest Owed on Principal:	\$9,097.00 (at 18% through March 5, 2010)
Attorneys Fees & Costs	<u>\$164,755.53</u>
TOTAL:	\$186,191.45

JUDGMENT [PROPOSED] - 1
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COPY

STOKES LAWRENCE, P.S.
800 FIFTH AVENUE, SUITE 4000
SEATTLE, WASHINGTON 98104-3179
(206) 626-6000

ORIGINAL

1 **JUDGMENT SUMMARY NO. 2**

2 Judgment Creditor: Roberto Rodriguez
3 Judgment Creditor's Attorney: Scott A.W. Johnson
4 Judgment Debtor: Sara and John Doe Thompson
Principal Amount: \$66,283.53
Interest Owed on Principal: \$34,301.66 (at 12% through March 5, 2010)
Attorneys Fees & Costs \$86,949.65
5 TOTAL: \$187,534.84

6
7 **JUDGMENT**

8 This matter comes before the Court on Roberto Rodriguez's Motion for Entry of
9 Judgment. Based on the Court's oral ruling of November 19, 2009, its Findings of Fact and
10 Conclusions of Law entered January 11, 2010, its Order on Attorneys' Fees and Costs entered
11 January 27, 2010, its Amended Order Awarding Attorneys' Fees and Costs dated February 23,
12 2010 and its review of the other pleadings and files of record in this matter, NOW
13 THEREFORE,

14 IT IS HEREBY ORDERED that Judgment shall be entered in favor of plaintiff Roberto
15 Rodriguez and against defendants Windermere Real Estate/Wall Street, Inc., and Sara and John
16 Doe Thompson jointly and severally in the amounts set forth in the Judgment Summary No. 1
17 appearing above, which is incorporated herein by reference. Interest shall accrue on all sums due
18 (both the principal judgment and the award of attorneys' fees and costs) at the rate of 18% per
19 annum, which is the contractual rate from the Broker/Sales Associate Agreement.

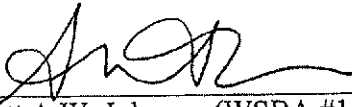
20 IT IS FURTHER HEREBY ORDERED that Judgment shall be entered in favor of
21 plaintiff Roberto Rodriguez and against defendant Sara and John Doe Thompson in the amounts
22 set forth in the Judgment Summary No. 2 appearing above, which is incorporated herein by
23 reference. Interest shall accrue on all sums due (both the principal judgment and the award of
24 attorneys' fees and costs) at the statutory rate of 12% per annum.

1 DATED this 8 day of March, 2010.

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JUDGE SUZANNE BARNETT

5 Presented by:

6 STOKES LAWRENCE, P.S.

7
8 By: 
9 Scott A.W. Johnson (WSBA #15543)
Aviva Kamm (WSBA #37199)
Attorneys for Plaintiff Roberto Rodriguez

10
11 Approved as to form;
Notice of Presentment Waived

12 DEMCO LAW FIRM, P.S.

13
14 By: _____
15 Matthew Davis (WSBA #20939)
16 Attorney for Defendants
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FILED

2010 MAR 18 PM 2:40

Judge Suzanne Barnett

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

ROBERTO RODRIGUEZ,

Plaintiff,

v.

WINDERMERE REAL ESTATE/WALL
STREET, INC., a Washington Corporation;
and SARA THOMPSON and JOHN DOE
THOMPSON, and the marital community
comprised thereof,

Defendants.

NO. 06-2-35308-1 SEA

ORDER ON MOTION FOR
RECONSIDERATION

THIS MATTER came on regularly for hearing on Defendants' Motion for
Reconsideration. The Court having considered the motion, response and files and records herein,

IT IS HEREBY ORDERED THAT Defendants' Motion
is denied.

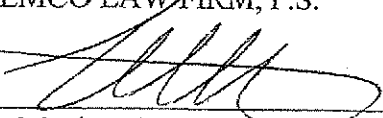
ORIGINAL

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8 DATED this 18 day of March, 2010.

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11 Judge Suzanne Barnett

12 Presented By:

13 DEMCO LAW FIRM, P.S.

14 
15 By Matthew F. Davis, WSBA No. 20939
16 Attorneys for Defendants

17 Z:\w.WallStreet\Rodriguez\o040609 mfd Order on MSJ.doc
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