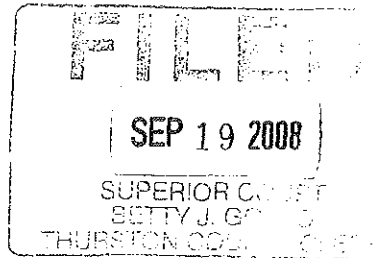


1 EXPEDITE
2 Hearing is Set
3 Date:
4 Time:



7 STATE OF WASHINGTON
8 THURSTON COUNTY SUPERIOR COURT

9 STATE OF WASHINGTON, *ex rel.*
10 WASHINGTON STATE PUBLIC
11 DISCLOSURE COMMISSION,

11 Plaintiff,

12 v.

13 BIAW MEMBER SERVICES
14 CORPORATION,

15 Defendant.

NO. 08-2-02193-6

COMPLAINT FOR CIVIL
PENALTIES AND FOR INJUNCTIVE
RELIEF FOR VIOLATIONS OF
CHAPTER 42.17 RCW

16 The Plaintiff, for causes of action against the Defendant, alleges as follows:

17 I. PARTIES

18 1.1 Plaintiff is the State of Washington, standing in relation to the Washington State
19 Public Disclosure Commission. The Washington State Public Disclosure Commission
20 ("Commission") was established by RCW 42.17.350 and is charged by RCW 42.17.360 - .370
21 with, among other things, responsibility for enforcing the state public disclosure laws
22 contained in RCW 42.17. The Commission's office is located in Olympia, Washington.

23 1.2 The Building Industry Association of Washington ("BIAW") is a statewide
24 trade association of builders, and is an affiliate of the National Association of Home Builders
25 ("NAHB"). The BIAW is organized under section 501(c) (6) of the Internal Revenue Code as
26 a non-profit organization. The BIAW Member Services Corporation ("BIAW-MS") is a

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

1
COPY

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1 wholly-owned subsidiary of BIAW. It is a for-profit corporation formed by BIAW in 1993.
2 BIAW-MSC was established in part to run the BIAW's Return On Industrial Insurance
3 Program ("Retro Program") for BIAW members who choose to participate in the program.
4 BIAW-MSC was also established to run a health and life insurance program, and to conduct
5 education seminars and related for-profit activities for BIAW members. BIAW-MSC's office
6 is located in Olympia, Washington. BIAW and BIAW-MSC are affiliated with the
7 Washington Affordable Housing Council, ChangePAC, It's Time for a Change, and Walking
8 for Washington. All three of these entities are political committees registered with the
9 Commission and have participated in Washington State elections for the past several years.

10 **II. JURISDICTION AND VENUE**

11 2.1 This Court has subject matter jurisdiction over BIAW-MSC, pursuant to RCW
12 42.17, and the Attorney General has authority to bring this action pursuant to RCW 42.17.400,
13 RCW 42.17.395(3) and RCW 42.17.360(5).

14 2.2 BIAW-MSC has carried out the violations alleged below, in whole or in part, in
15 Thurston County.

16 2.3 Venue is proper in this Court pursuant to RCW 4.12.

17 **III. FACTUAL ALLEGATIONS**

18 3.1 Pursuant to RCW 42.17.080(1), each political committee, as defined in
19 RCW 42.17.020, must file periodic reports of contributions and expenditures with the
20 Commission. A political committee is defined in RCW 42.17.020(39) as "any person (except a
21 candidate or an individual dealing with his or her own funds or property) having the
22 expectation of receiving contributions or making expenditures in support of, or opposition to,
23 any candidate or any ballot proposition."

24 3.2 The Retro Program is a pooled workers' compensation insurance program
25 authorized under the rules of the Washington State Department of Labor and Industries ("the
26

1 Department") and administered by the BIAW-MS. According to BIAW's website, the Retro
2 Program is a voluntary workers' compensation insurance program that provides services for
3 more than 6,000 BIAW members who participate in the program and who pay \$180 million in
4 annual premiums to the Washington State Department of Labor & Industries ("L&I"). Under
5 the Retro Program, participating member companies pay insurance premiums to the
6 Department based on predicted workers' compensation claims for a three-year period. BIAW-
7 MSC offers builder safety programs to participants with the aim of increasing workplace safety
8 and lowering worker compensation claims.

9 3.3 As part of the Retro Program, the Department pays refunds into a benefit trust
10 account administered by BIAW-MS for the benefit of participating BIAW member
11 companies when actual claims to the pool are less than the anticipated number of claims for
12 which they obtained insurance. BIAW-MS provides an annual estimate for each local builder
13 association of the anticipated Retro Program refund that will be sent to the association. Once
14 the refunds are received from the Department, BIAW-MS distributes them annually as
15 follows:

- 16 • 80% to participating member companies,
- 17 • 10% to BIAW-MS for administering the program, and
- 18 • 10% to the local builder associations for their use.

19 3.4 In 2007, it became apparent that the actual refunds from the Retro Program
20 would be much larger than the estimates.

21 3.5 As a result of the anticipated overage (amount over the original estimate),
22 BIAW-MS officers personally approached each of BIAW's 15 local builder associations and
23 requested they contribute some or all of their excess unanticipated retro funds to assist with
24 2008 political campaigns. These personal visits to the local builder associations occurred
25 between March 7 and July 10, 2007.
26

1 3.6 In response to these solicitations by BIAW-MSA officers in 2007, eleven of the
2 15 local builder associations authorized BIAW-MSA to retain a portion of their 2007 Retro
3 Program refund to be given as contributions to ChangePAC for use in the 2008 political
4 campaigns.

5 3.7 BIAW-MSA sent refund checks on July 5, 11, 13, and 23, 2007, payable to the
6 15 local associations, totaling \$4,285,304.20.

7 3.8 Between July 5 and July 23, 2007, BIAW-MSA retained \$584,527.53 from the
8 Retro Program refunds from eleven of the local builder associations for the purpose of
9 donating the funds to ChangePAC, as needed, for 2008 electoral campaign activities. The
10 funds were retained with the permission of the local builder associations, as listed below:

11	• Building Industry Association of Clark County	\$122,649.59
12	• Central Washington Home Builders Association	\$ 65,477.98
13	• Home Builders Association of Tri-Cities	\$ 65,941.92
14	• Lower Columbia Contractors Association	\$ 11,562.63
15	• North Peninsula Building Association	\$ 12,398.86
16	• Olympia Master Builders	\$103,600.57
17	• San Juan Builders Association	\$ 2,846.97
18	• North Central Home Builders Association	\$ 37,453.97
19	• Skagit-Island Counties Builders Association	\$ 26,499.83
20	• Spokane Home Builders Association	\$126,095.21
21	• Building Industry Association of Whatcom County	<u>\$ 10,000.00</u>
22	Total	\$584,527.53

23 3.9 From July 2007 until August 21, 2008, these contributions went undisclosed
24 and the public had no way of knowing that these funds were available to ChangePAC as
25 campaign contributions.

26 3.10 BIAW-MSA separately accounted for the retained balance of the 2007 refunds
from the eleven local associations.

Citizen Action Letter Pursuant to RCW 42.17.400

3.11 On July 25, 2008, the Attorney General and three county prosecutors received a
complaint under RCW 42.17.400(4) ("citizen action letter") alleging that BIAW-MSA was a
political committee and had failed to properly register or file campaign finance disclosure

1 reports with the Commission. The letter was forwarded to the PDC with a request for an
2 investigation of the allegations and recommendation. On September 9, 2008, the complainants
3 filed a second notice under RCW 42.17.400(4).

4 3.12 On September 15, 2008, a special meeting of the Commission was convened to
5 receive Commission staff's report on its investigation. At that meeting, the Commission voted
6 to support the staff's recommendation that the Attorney General proceed based on BIAW-
7 MSC's apparent multiple violations of the state campaign finance disclosure laws related to
8 campaign contributions it solicited, received and spent from the eleven local associations.

9 **Filings After the Citizen Action Letter**

10 3.13 On August 20, 2008, BIAW-MSC transferred the funds it held from the local
11 associations to ChangePAC and attributed the contributions to the eleven local associations.
12 On August 21, 2008, ChangePAC filed PDC form C-3 and reported receiving contributions
13 from eleven local builder associations on August 20, 2008, totaling \$584,527.53.

14 3.14 To date, BIAW-MSC has not filed the required registration or campaign
15 contribution and expenditure forms to account for its solicitation, receipt and expenditure of
16 the eleven local associations' political campaign contributions.

17 **IV. CLAIMS**

18 Based on the foregoing allegations, Plaintiff makes the following claims:

19 4.1 First Claim - Plaintiff reasserts the allegations made above and further asserts
20 that Defendant, in violation of RCW 42.17.040, failed to properly or timely register as a
21 political committee for its solicitation, receipt and expenditure of the 2007 funds.

22 4.2 Second Claim - Plaintiff reasserts the allegations made above and further
23 asserts that Defendant, in violation of RCW 42.17.080 and .090, failed to properly and timely
24 file reports of campaign expenditures and campaign contributions solicited and received by the
25 Defendant from eleven of BIAW's local builder associations.
26

