



LASHER  
HOLZAPFEL  
SPERRY &  
EBBERSON

PLLC

ATTORNEYS AT LAW 2600 TWO UNION SQUARE, 601 UNION STREET  
SEATTLE WA 98101-4000 / TELEPHONE 206 624-1230 / FAX 206 240-2563  
WWW.LASHER.COM

February 3, 2006

DIRECT LINE: (206) 654-5631  
EMAIL: henry@lasher.com

Mr. Manuel G. Juzon  
Manager of Business Operations  
Edmonds School District  
20420 68<sup>th</sup> Avenue W.  
Lynnwood, WA 98036

Re: Seattle Piano Gallery

Dear Mr. Juzon:

This law firm represents the Seattle Piano Gallery. My client has furnished me with your letter dated December 28, 2005 regarding transactions over the past two years regarding new Diapason pianos. My client believes that your letter fundamentally misunderstands or misconstrues the nature of the relationship and the transactions between Seattle Piano Gallery and the Edmonds School District and has asked me to respond. My client further believes that your letter substantially misunderstands or misconstrues your recent discussion with Mr. Arnie Tucker regarding these issues.

Over the past several years, Arnie Tucker of the Seattle Piano Gallery has developed a good relationship with several of the administrators at the Edmonds School District, including Ms. Marla Miller and Mr. Tam Osborne. Mr. Tucker met Ms. Miller and Mr. Osborne through a Rotary organization in Edmonds. Mr. Tucker and the Seattle Piano Gallery have been very active in the Edmonds Jazz Connection musical events and has frequently encountered both Ms. Miller and Mr. Osborne in connection with those musical events. Over these past several years, both Ms. Miller and Mr. Osborne on occasion bemoaned the extremely sad state of the pianos in the various Edmonds schools. It is with regard to this problem that Mr. Tucker and the Seattle Piano Gallery have attempted to help the District and its administrators, with little or no corresponding benefit for the Seattle Piano Gallery.

The transactions in question began when Mr. Tucker became aware of a program whereby school districts could purchase high quality Diapason pianos made by the Kawai Company in Japan in container-load quantities at very attractive prices. When he mentioned this opportunity to his contacts at the Edmonds School District, Mr. Tucker was told that the school district badly needed to replace its pianos but had no money to do so.

January 31, 2006

Page 2

Subsequently, Mr. Tucker learned that a local distributor of Kawai products named Greenwave might be willing to deliver a container of new Diapason pianos to a school district in Washington on approval, in order to introduce these high quality pianos to the marketplace.

My client's contacts at the Edmonds School District reacted with a great deal of enthusiasm to this proposal and Mr. Tucker spent a great deal of his time and energy (with no return to him or Seattle Piano Gallery) in putting together this sale on approval. A total of 14 brand new Diapason pianos, four of them grand pianos and ten of them uprights, were delivered to the Edmonds School District in 2003 at no cost to the Edmonds School District. It was anticipated that the pianos would remain in the various Edmonds schools for approximately a year and a half while the administration figured out how to find the money to purchase those pianos. My client received nothing for helping the Edmonds School District receive these pianos on approval, but it did expect to make a commission when the pianos were eventually purchased.

This program cost the Edmonds School District absolutely nothing. The District could have simply returned the pianos at the end of the approval period. However, during the approval period, the distributor Greenwave unexpectedly shut down their Washington facility and Kawai insisted that it either receive payment for the pianos out on approval at the Edmonds School District or that the pianos be returned. Rather than simply return the pianos, the school district approached Seattle Piano Gallery with an unusual scheme intended to allow the school district to keep the pianos and to eventually to own the pianos, but without going through the normal purchasing procedures required of the school district.

Specifically, it was proposed to Mr. Tucker that Seattle Piano Gallery enter into a one-year written lease agreement with the Edmonds School District. The purpose of the lease agreement was to provide the funds (\$76,121.10) needed to pay off Kawai for the container load of pianos, but without the school district actually purchasing them. Someone at the Edmonds School District drafted a complicated lease agreement, and the Seattle Piano Gallery signed it. The full amount of the lease payment given to Seattle Piano Gallery was immediately turned over to Kawai; my client retained no portion of the "lease" payment.

Thus, for a second time my client cooperated with and assisted the Edmonds School District to accomplish its goals, and received no recompense. In fact, because the lease payment intended to accomplish the purchase of the pianos passed through my client's books, Seattle Piano Gallery had to pay income and B&O tax upon it. My client received no reimbursement for this unexpected outlay. As they say, no good deed goes unpunished.

January 31, 2006

Page 3

The terms and conditions of the lease drafted by the District are extremely unusual. It is somewhat difficult to discern the intent of the parties, and it is quite likely that this lease was not drafted by an attorney, because of the several confusions contained therein. However, it is undisputed that this piano lease was drafted entirely by the Edmonds School District and thus would undoubtedly be construed against the District.

In its terms, the lease agreement drafted by the District and signed by Seattle Piano Gallery is extremely one-sided. The primary intent of the lease appears to be to allow the District to purchase the pianos without going through a competitive bidding process, or in the alternative to receive back all the money paid to lease the pianos. It is difficult to see any benefit at all for the Seattle Piano Gallery in this lease agreement, with the sole exception of the provisions of paragraph 9.

By that paragraph, Seattle Piano Gallery retained the right to hold a piano sale within the one-year term of the lease, at a time, date and location approved by the Edmonds School District. At this sale, my client had the right to sell the 14 Diapason pianos, as well as other pianos that it would bring to the site for the sale. At the conclusion of the sale, any of the 14 pianos that were not sold to the public would become the property of the Edmonds School District. For any pianos that were sold, the district would receive a pro rated portion of the lease payment back. Thus, if all 14 pianos were sold to the general public at the sale, the school district would receive its \$76,121.10 lease payment back and thus would have had another free year's use of the Diapason pianos.

This sale arrangement offered my client the possibility of making a profit on the 14 pianos, over and above the price noted in Exhibit A to the lease, plus profits on any other pianos that it could sell at the sale. All costs of the sale would be borne entirely by Seattle Piano Gallery. Notwithstanding this one-sided arrangement, which left all of the risk with Seattle Piano Gallery and most of the potential benefit with the school district, my client agreed to this arrangement, signed the lease, and was fully willing to carry out its side of the agreement between the parties.

However, for reasons that are not entirely clear to Mr. Tucker and the Seattle Piano Gallery, the Edmonds School District was not willing to carry out the original plan reflected in the lease. Instead, my client was approached with a new proposal. In retrospect, it appears that the intent of the new proposal was to allow the Edmonds School District to come into ownership of all 14 pianos without ever purchasing them and without any risk of any of them being sold to the general public.

My client understands that there is a cap or lid of \$40,000 on purchases that the school district can make without competitive bidding. Perhaps by coincidence, the school district proposed to my client that it purchase the four grand pianos before the

January 31, 2006  
Page 4

public sale for a total of approximately \$36,000. This purchase, including tax, would fall below the \$40,000 cap. It would also leave the school district with full ownership of those four grand pianos at a price well below what it would cost to replace them, and would preclude the risk that someone else would buy the pianos at the public sale.

In order to effectuate this plan, the school district asked Mr. Tucker to provide an invoice, and the school district generated a purchase order. Copies of both are enclosed. Ultimately, a check was cut by Edmonds School District and delivered to my client, in the face amount of \$39,748, representing the invoice price for the four grand pianos, including tax.

Your letter suggests that somehow this entire process, involving an invoice, a purchase order and a check signed by the Secretary of the school board was all an "erroneous payment." It is your assertion rather than the payment which is erroneous. In order to see the error of your conclusion, we all need to understand what the Edmonds School District was trying to accomplish when it asked Mr. Tucker and Seattle Piano Gallery to alter the terms of the lease.

Mr. Tucker anticipated that he would be able to sell some or all of the Diapason pianos at the intended sale, for a price well above the amount he would need to refund to the District. Since the Seattle Piano Gallery had received no commission, no profit and indeed no payment whatsoever in any of the previous transactions involved in providing these new pianos to the Edmonds School District, this was my client's only opportunity to make any money to cover its work and overhead. In exchange for the opportunity to sell these pianos at a profit, Mr. Tucker was willing to guarantee that the school district would either receive back the lease payment it previously paid on each piano, or the piano itself.

However, when the school district decided to change the terms of the lease, its proposal would deprive Seattle Piano Gallery of the opportunity to make money on this transaction. As to the four grand pianos, my client anticipated that it could sell each for at least \$14,000, which is \$5,000 more than the lease price in Exhibit A for those grand pianos. (This in fact turned out to be true, because Seattle Piano Gallery was able to sell two other Diapason grand pianos at the sale, both for well over the \$14,000 anticipated price.)

Therefore, by asking Mr. Tucker to take those four grand pianos out of the sale, the school district was knowingly asking my client to give up the opportunity to generate as much as \$20,000 of income, over and above what would be necessary to reimburse the school district for its lease payment on those pianos.

Furthermore, the school district also asked Mr. Tucker to manage the on-site sale

January 31, 2006  
Page 5

in such a way as to avoid selling the other 10 upright pianos if he could. Mr. Tucker agreed to do this as well. However, this forbearance on the part of Seattle Piano Gallery also cost it potential revenue. Mr. Tucker anticipated that each of the uprights could have been sold for as much as \$1,600 more than the reimbursement owed to the school district under the lease.

Furthermore, by reducing the number of pianos available for sale, the District's request made it less likely that the profits of the sale would exceed the costs of the sale, such as wages, advertising and moving the pianos. In fact, my client lost money on the sale.

The reason that the school district made these requests of Seattle Piano Gallery is obvious. If all 14 pianos were sold to the public, the school district would get its entire lease payment back, but it would then have to replace the pianos. The replacement cost of these pianos would be considerably higher than the \$76,121 paid for them through the lease program. In other words, my client was asked to forebear from selling the 14 Diapason pianos, despite the financial cost to my client, so that the District would not need to purchase replacement pianos.

This forbearance explains the willingness of the District to pay my client the \$36,000 plus tax last September. Five thousand dollars of anticipated profit on the four grand pianos is \$20,000 and \$1,600 anticipated profit on the 10 upright pianos is \$16,000. Mr. Tucker and Seattle Piano Gallery carried out their part of this bargain, to the full benefit of the Edmonds School District. All four grand pianos were taken out of the sale so that the district would not have to replace them. Furthermore, Mr. Tucker and his salespeople were successful in steering people away from the 10 upright pianos that the District had been using. Only one of the ten was sold to the public, and that occurred at the very end of the sale, when Seattle Piano Gallery ran out of other Diapason upright pianos to sell.

Thus, the result of this transaction was extremely favorable to the District. The District was able to retain 13 of the 14 pianos it had initially received on approval from Greenwave. The lease payment for the 10<sup>th</sup> upright piano (\$4,617.36) was promptly reimbursed to the District after the sale. For the initial lease payment of \$76,121, plus the additional payment of \$36,000 plus tax, the Edmonds School District received far greater value in pianos and avoided the difficulties of putting the entire purchase out to bid.

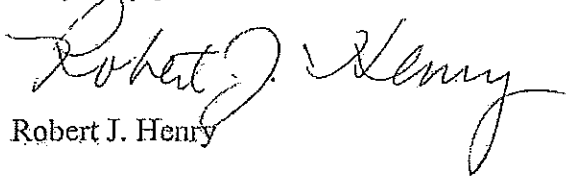
Upon a complete review of this transaction with its counsel, occasioned by your letter, Seattle Piano Gallery has concluded that it is entitled to keep the full amount of the September 9, 2005 payment, with one exception. Since one of the ten upright pianos was sold to the public, despite the best efforts of Seattle Piano Gallery, my client feels it would be equitable, although not required, to return to the Edmonds School District the

January 31, 2006  
Page 6

\$1,600 of anticipated profit which the district paid to Seattle Piano Gallery. Enclosed herewith is my client's check in the amount of \$1,740.80, representing the \$1,600 of anticipated profit on the 10<sup>th</sup> Diapason upright piano, together with the sales tax on that amount. Negotiation of this check will constitute an accord and satisfaction regarding the claim set forth in your letter and a release of any claims against Seattle Piano Gallery.

Finally, it is regrettable that the failure of the various administrative personnel at the Edmonds School District to candidly and straightforwardly explain to you the nature of this transaction led you to reach inappropriate conclusions regarding Seattle Piano Gallery. Mr. Tucker and Seattle Piano Gallery have worked hard to assist your district with its music program needs and its financial difficulties for these past several years, and as noted above, my client received nothing from any of these transactions until the District chose to change the terms of the lease to my client's detriment and willingly and voluntarily paid my client \$39,748.50 for that purpose. If your district wishes to do business with my client in the future, we believe that a letter of apology would be appropriate.

Very truly yours,



Robert J. Henry

RJH/alb  
Enclosures  
cc: Client