

September 22, 2008

Better Business Bureau Case # 22046943

CONSUMER TESTIMONY of Clyde Gephart and Christine Wallace/Gephart

We attempted to purchase two manufactured homes from DSH Housing (dba Quality Wholesale homes) in Washington, Utah in July of 2007.

We were told that we could purchase two pre-built homes for less money than it would cost for one site built home. They claimed they owned all the factories that build the homes and that we would save money buying "wholesale", direct from their factories. The truth is, they are only retailers.

They told us that it was the final day to "join" their PPP program and we had to buy two homes to qualify. This was a program that would save us thousands of dollars in purchasing their houses.

They told us that our \$5,000 deposit was just to lock in the price of the homes. We know people that were offered their PPP program months after we were told that it was ending.

They told us that we were pre-qualified to buy the homes, even after they had checked my credit report, which had two Federal Tax Liens against me. I had settled my debt with the IRS 15 months prior to this, and I was unaware that I even had any Tax Liens against my name. When I found out they were there, I called the IRS, who instructed the counties to remove them.

We were never shown the back side of their contracts that we signed, which is the reason our initials do not appear on the back page of the contracts. Their fine print, which is located on the back, says they can keep our deposit if we cancel the contract, plus sue us for 20% of the cost of the homes, if we try to sue DSH in an attempt to re-coop our deposit.

No one would ever sign one of their contracts if these things were pointed out to them.

We believe the Business employed deceptive, predatory, misleading and unconscionable sales and business practices. They coerced us into signing three home purchase agreements, and took \$5000.00 from us, without providing any goods or services. Their fraud also caused us to lose an additional \$1000.00.

When the Business outright refused our refund, we filed complaints with the Better Business Bureau (BBB) and the Bad Business Bureaus (ripoffreport.com). As a result, a number of other people, coast to coast, have come forward with testimony's of losses they've suffered as a result of this Business's fraudulent and predatory practices (**Exhibit 1**).

June 2007: My wife and I search the internet for an affordable home in Las Vegas. We clicked an advertisement that took us to the DSH Housing website(s). The website(s) convinced us that DSH was a factory, offering high quality manufactured homes "factory direct to the public at wholesale prices"* (**Exhibit 2**). We called the company and Dave Higbee convinced us to drive to Washington, Utah to tour their homes (250 miles round trip). He sent us a mortgage application so we could get "pre-qualified" so we filled it out and emailed it back to him.

* The company claims they are the "wholesale factory", but in truth, they are only a retailer.

** Our credit report contained 2 federal tax liens DSH did not make us aware of when they "pre-qualified" our loan.

6/17/07: We drove to Utah and met with Dave Higbee, who told us that DSH had checked our credit record (**Exhibit 3**) and we were “pre-qualified” for a land/home loan**. He showed us some of their model homes, and convinced us that “not only could “*their factory*” build us a higher quality home, but also we could afford to buy a second home for our son, which would qualify us for their “Preferred Platinum Program” (PPP) (**Exhibit 4**). He gave us a folder containing information about the “PPP” program, floor plans from all “their factories”, and two separate price lists, one of their “regular prices” and one with prices for their PPP program”. (**Exhibit 5**). He explained how buying two homes and referring other people to them, we would save enough money on the first home to pay for the second home. He gave us an estimate of \$170,000 for two, 1500 square feet homes, built “duplex style”, separated by a two car garage, with “earthquake-proof foundations (**Exhibit 6**), stucco exteriors and tile roofs, same quality as the homes on his tour. He encouraged us to find a building lot in Las Vegas large enough for them to build the two homes.

7/10/07: We found a 1/3 acre lot listed for \$160,000, which our realtor negotiated with the owner to accept \$110,000 offer with \$1000.00 earnest money. Our contract allowed us 60 days due diligence (**Exhibit 7**). Dave Higbee said he would contact the City of Las Vegas to obtain our building permits. We selected model #084623F from “their Riverside factory”, created a lot plan and emailed it to him.

7/13/07: Dave Higbee told us he had contacted Las Vegas planning and they told him they would not allow them to build 2 homes on the lot, unless the second home was ½ the size of the first home. He urged us to drive to his office again so he could show us how “their factory” could “stretch” the model we chose to 1800 square feet to allow them to build a 900 sq. ft home for our son.

7/21/07: We drove to their offices and met with Mark Gibson, who told us Dave Higbee had a family emergency and was unable to meet us. He told us our land/home mortgage application had been turned over to Justina Gibson at Vanguard mortgage (later we learned Justina was his wife). He drew up the plan to “stretch” the model we selected to 70ft. length (1800sf) (**Exhibit 8**). He produced 2 purchase agreements he filled out with the same model numbers and prices, saying that the purpose of the agreements was to “lock in the prices on their “PPP” rate sheet, which required we give him a \$5000.00 “good faith deposit”. He told us the “price lock” was necessary in order for them to provide construction bids to the mortgage processor. When we expressed our concern that our son had not chosen a model yet, he told us that the “price lock” would allow our son to select any model at a later time (**Exhibit 9**). He told us that “the company was expecting an enormous price increase”, that if we waited, even a few days to talk it over with our son, we would run the risk of having to pay much higher prices for which our income wouldn’t qualify us.

Mark assured us that our deposit would go towards the purchase price of the homes, that our financing was “guaranteed” and that our money would be fully refunded if anything happened that would prevent them from being able to build the homes for us. He continued to assure us by saying “his company had built hundreds of homes in Las Vegas, so obtaining our building permits would be no obstacle”. When we told him we wanted to take some time to do some comparison shopping and check the company’s Better Business Bureau record, he pulled up the BBB web page on his computer, pointing out that the Business was an accredited member in good standing, with a “satisfactory” rating. He neglected to scroll down the page that contained the listing of numerous complaints filed against them (**Exhibit 10**).

Still reluctant to give them our money, Gibson skillfully engaged Bob Benson, who he introduced as the owner, to help him induce us with the company's ultimately deceptive, unconscionable and unlawful [Utah code 13-11-4(k)] high pressure sales tactic, "final day of the PPP Program". They told us that, "the company had discontinued their PPP program" and that "they would make one final exception for us". They showed us their company's webpage that convinced us this was true (**Exhibit 11**). Fact is, not only did our realtor, Barry Franer, received a PPP program solicitation in the mail from DSH more than a month later, but countless others before and after us have reported being deceived by this swindle. Gibson and Benson insisted that we "lock the prices" by signing their agreements or they wouldn't be able to help us get a home. Suffice to say, this is what persuaded us to sign both agreements and give them \$5000.00 (**Exhibit 12**). We were not shown, nor did they explain any of the terms hidden on the reverse side of their agreements (**Exhibit 13**), one of which we learned, much later, contained a "non-refundable deposit" clause. Instead, we relied on Mark Gibson, Dave Higbee and Bob Benson's promises that the agreements were to simply lock in the PPP prices while they helped us obtain permits, bids and financing and that there was "no way we could lose our deposit".

Mark Gibson said he would mail a package of home options and list of their local Las Vegas contractors who would furnish our site-work bids to Justina Gibson, their mortgage specialist. We waited two weeks, and the package never arrived. We called several times and were finally able to speak to their "home specialist", Doug Spicer, who claimed they had mailed the package 3 separate times (to this day, we have not received one of those packages).

8/11/07: Justina collected our loan disclosures and informed us we were approved for a loan of \$285,000. She said she could close our loan within days after she received the construction bids from DSH. We called and emailed Dave Higbee, Mark Gibson and Doug Spicer several times for a week to inquire about the package they were suppose to send, and again, no response. The land owner was anxious to close, so Barry Franer advised us to drive to DSH's office and select our colors in person, rather than wasting more time waiting for the "lost packages" to arrive in the mail. (No one at DSH informed us that their options package was available to download on their website) (**Exhibit 14**), which would have saved us 4 hours of time driving to their offices again). Doug Spicer helped us choose colors, and told us DSH would supply the bids to Justina immediately.

8/16/07: Justin Kerns, (the "home specialist manager" for DSH), called my wife, saying, ""unfortunately, the person responsible for Las Vegas site construction had quit the company without warning", and "you will have to find your own contractors, or give them an additional \$995.00 in advance if you want us to supply bids for the site-work". Shocked and confused, we immediately called Barry Franer, our realtor, who called Mark and Justina Gibson to inquire about our agreement. They told him that my wife "must have misunderstood Justin Kerns", and told him to assure us that our homes would be built "turn-key". Also, we began to receive annoying phone calls at work from "Peritius", trying to persuade us to buy "home warranties", "pre-homeowners insurance" and "credit repair" services.

8/17/07: Doug Spicer told us that "their Riverside factory was incapable of building the home we selected, that they could neither stretch the home to 70ft. length nor build it with a 40lb roof load, required for the tile roof". Spicer emailed some floor plans from their Arizona factory, urging us to quickly select another model. Only one home on the list was the right size and would fit our budget. He emailed a new purchase agreement (again, only the front page), stating this agreement would supersede the other agreements. This fiasco caused us to begin to doubt the company's integrity, so we tried again to reach Mark Gibson, Dave Higbee and Doug Spicer to remind them to include our financing contingency on the new agreement

(Exhibit 15). The delays caused us to worry that we may go beyond our due diligence period on our land, so without a response from anyone at DSH, we added the finance contingency and emailed the signed agreement back to them on 8/21/07 **(Exhibit 16)**.

8/23/07: Justina Gibson told us she finally received the required bids from DSH so she could order the appraisal. 8/29/07: Justina told us she was having trouble with the appraisal, because they failed to locate a comparable property within a 5 mile range. She advised us to seek our own appraisal. Our realtor suggested we use "Las Vegas Appraisals", who told us they could expedite our appraisal, but only if we pay them \$1000 cash in advance. Since we only had 9 days left to close on the loan or lose our earnest money, we paid for the appraisal and they submitted it to Justina the next day (8/30/07).

8/31/07: Justina told us our financing was denied, because the appraisal came in at only \$210-\$220,000, but the combined bids totaled \$322,000. (not including stucco or tile roofing) **(Exhibit 17)**. This meant that DSH intended to charge us \$102,000 more to build a home than it would be worth. She told us to call Mark Gibson and cancel our purchase agreement so we could get our money back and that we "will just have to eat the money we paid for the appraisal", which we did on 9/3/07. Barry Franer cancelled our land agreement based on due diligence. The owner of the land was furious and refused to sign the escrow company's earnest money release.

9/3/07: Mark Gibson told us that "he couldn't issue our refund until he received our cancellation notice in writing". We emailed our notice on 9/6/07. Mark Gibson's reply was ""the powers that will be refuse to refund your deposits". We replied with a demand to refund our money, reminding them that our entire agreement was contingent on financing **(Exhibit 18)**. No one at the Business would answer our calls or emails after that.

10/4/07: We received a letter from Victor Harris, the company's attorney/COO, which again refused our refund, quoting the back of their contract, urging us to locate another lot to build a home on and sign yet another contract that would allow them to keep our money indefinitely. The letter threatened us with a lawsuit for an additional 20% of the price of the homes plus court costs and legal fees if we pursued a lawsuit **(Exhibit 19)**. This is the first time we learned of their "non-refundable deposit" policy hidden on the back of their agreements. Who, in their right mind, would agree to all those terms, especially when everything is still "To Be Determined" at the time when they pressure you to sign their agreements?

10/5/07: We filed a complaint with the Better Business Bureau **(Exhibit 20)**. 10/16/07, Victor Harris responded with a copy of the same letter he sent to us on 10/4/07. 10/24/07 we filed a rebuttal to his response, reminding them that our agreement was indeed, contingent on financing. Victor Harris argued that the company never accepted the financing contingency on our agreement. Mr. Harris emphasized that he attached true and correct copies of all agreements. It is interesting to note that Mark Gibson's initials had been (in our opinion, beneficially) removed from their copy of the agreement **(Exhibit 21)**. I pointed out the fact that Mark Gibson initialed the agreement, Doug Spicer emailed it to us urging us to sign, and this agreement was handed over to the finance company as their bid, so we believed this was evidence of their acceptance of that agreement.

11/28/07: DSH failed to respond to our offer to arbitrate. 12/6/07: BBB closed our case as UNRESOLVED. 12/19/07: BBB received a response from DSH, and re-opened the case without notice to us. Their response was a check for "partial refund", claiming they were entitled to keep \$3,940.00 of our \$5000.00 for "out of pocket expenses" and "processing fees", again,

quoting the back of their agreements again. Do they honestly believe a few hours spent manipulating us into signing those contracts is worth \$3940?!! The letter said that if we cashed their check, we were automatically agreeing to the terms of their contract. When we found out the case had been re-opened, and closed as resolved, because they said we didn't respond to an email sent from BBB (we never received), we demanded the case be re-opened and once again agreed to arbitrate by sending our notice to BBB 1/5/08.

PRAYER FOR RELIEF

After countless hours listening to other consumer's bad experiences with this Business, we have concluded that DSH Housing Group and its array of dba's, are not in the business to sell homes, rather it appears they have been engaged in an exceedingly profitable deposit collection business for many years.

We respectfully request that this arbitration result in the following fair and equitable actions:

Declare judgment that the acts and practices of the Business violate the Utah Consumer Sales Practices Act (Utah Code 13-11) (**Exhibit 22**) and enter a permanent injunction that may prevent future violations of this Act, including but not limited to: rescission of contracts and restitution, and the disgorgement of ill-gotten gains by the Business; and

award a full refund of our \$5000 deposit, plus \$1000 for the money we lost on the appraisal, together with \$500.00 (10%) in accumulated annual interest; and

award full and immediate deposit refunds to all consumers who did not sign or initial the back page of their purchase agreements and were forced to cancel these agreements due to failed financing or otherwise incapable of completing the purchase through no fault of their own, and

such injunctive and ancillary relief as may be necessary to avert the likelihood of future consumer injury and to preserve the possibility of effective relief, including, but not limited to, temporary and preliminary injunctions and an order freezing assets; and

declare judgment to reimburse us for countless hours spent converting our oral testimony and those of our witnesses into this written format plus shipping and handling expenses. Until 9/20/08, when we received notice from BBB that the Business had chosen to arbitrate in writing, we and our witnesses prepared to testify in person, allowing us only 5 days to submit this testimony and evidence in writing; and

such other and additional relief as you may determine to be fair, just and proper.

Respectfully submitted,

_____ Date: _____
Clyde Gephart

_____ Date: _____
Christine Wallace