

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,
By THOMAS W. CORBETT, JR.,
ATTORNEY GENERAL,

Plaintiff,

v.

HOME PRO IMPROVEMENTS, LLC;
BENJAMIN J. SEIDEL, Individually
and as Owner of HOME PRO
IMPROVEMENTS, LLC; and TROY D.
SHOPE, Individually and as Owner of
HOME PRO IMPROVEMENTS, LLC,

Defendants.

CIVIL DIVISION

No.

COMPLAINT IN EQUITY

Filed on Behalf of Plaintiff:

COMMONWEALTH OF
PENNSYLVANIA
THOMAS W. CORBETT, JR.,
Attorney General

Counsel of Record for this Party:

Amy L. Schulman
Deputy Attorney General
PA I.D. #88088

Office of Attorney General
Bureau of Consumer Protection
6th Floor, Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219
(412) 564-5134

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FAYETTE COUNTY, PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA, : CIVIL DIVISION
By THOMAS W. CORBETT, JR., :
ATTORNEY GENERAL, :

Plaintiff, :
No.

v. :

HOME PRO IMPROVEMENTS, LLC; :
BENJAMIN J. SEIDEL, Individually :
and as Owner of HOME PRO :
IMPROVEMENTS, LLC; and TROY D. :
SHOPE, Individually and as Owner of :
HOME PRO IMPROVEMENTS, LLC, :

Defendants. :
:

NOTICE

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

**LAWYER REFERRAL SERVICE
FAYETTE COUNTY BAR ASSOCIATION
61 E. MAIN STREET
UNIONTOWN, PA 15401
(412) 430-1227**

Amy L. Schulman
Deputy Attorney General

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ATTORNEY GENERAL,	:	
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Plaintiff,	:	
	:	No.
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HOME PRO IMPROVEMENTS, LLC;	:	
BENJAMIN J. SEIDEL, Individually	:	
and as Owner of HOME PRO	:	
IMPROVEMENTS, LLC; and TROY D.	:	
SHOPE, Individually and as Owner of	:	
HOME PRO IMPROVEMENTS, LLC,	:	
	:	
Defendants.	:	

COMPLAINT IN EQUITY

AND NOW, comes the Plaintiff, the Commonwealth of Pennsylvania, acting by Attorney General Thomas W. Corbett, Jr., through the Bureau of Consumer Protection ("Commonwealth"), and brings this action to redress violations of the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq.* ("Consumer Protection Law") and respectfully represents the following:

1. Plaintiff is the Commonwealth of Pennsylvania, by Attorney General Thomas W. Corbett, Jr., through the Bureau of Consumer Protection with offices located at 14th Floor Strawberry Square, Harrisburg, Pennsylvania 17120 and 6th Floor, Manor Complex, 564 Forbes Avenue, Pittsburgh, Pennsylvania 15219.

2. Defendant Home Pro Improvements, LLC (“Home Pro”) is a Pennsylvania Limited Liability Company with a former registered place of business located at 50 West Main Street, Suite 706, Uniontown, Pennsylvania.
3. Defendant Benjamin J. Seidel an adult individual residing at 614 Howard Street, Brownsville, Pennsylvania, 15147.
4. Defendant Troy D. Shope is an adult individual residing at 501 South Water Street, Masontown, Pennsylvania, 15461.
5. At all times relevant and material hereto, Benjamin J. Seidel and Troy D. Shope were the owners of Home Pro Improvements, LLC.
6. From at least November of 2003 through February 2004, Defendants Home Pro, Benjamin J. Seidel, and Troy D. Shope (hereinafter collectively referred to as “Defendants”) engaged in trade and commerce within the Commonwealth of Pennsylvania by advertising, offering for sale, and selling home improvements and other construction services.
7. At all times relevant and material hereto, Defendant Home Pro Improvements, LLC was controlled, in whole or in part, by the individual Defendants Benjamin J. Seidel and Troy D. Shope, who with actual and constructive knowledge, authored, approved, endorsed, formulated, directed, controlled, and/or participated in the complained of acts and practices of Defendant Home Pro Improvements, LLC.
8. The Commonwealth has received consumer complaints regarding Defendants’ business practices.
9. The consumer complaints include, but are not limited to, allegations that:

- a. Defendants failed to perform home improvement services after accepting payment from consumers;
- b. Defendants failed to refund consumer deposits, despite non-performance under the contract;
- c. Defendants failed to include the required “Buyer’s Right to Cancel” and “Notice of Cancellation” in their written contracts; and,
- d. Defendants failed to provide consumers with an oral notice of their right to cancel the written contract.

COUNT I—VIOLATIONS OF THE CONSUMER PROTECTION LAW
FAILURE TO PERFORM HOME IMPROVEMENT SERVICES AS CONTRACTED

10. Paragraphs 1 through 9 are incorporated herein as if fully set forth.
11. From at least November 2003 through February 2004, Defendants collected at least \$7,873 in downpayments from consumers and thereafter failed to perform any of the home improvement services set forth in the consumers’ contracts.
12. Defendants accepted downpayments from consumers ranging from \$500 to \$4,000 for services that the Defendants never provided.
13. By entering into home improvement contracts with consumers and by accepting payment from consumers, Defendants represented to consumers that they would perform the services set forth in the consumers’ contracts.
14. Defendants’ failure to provide home improvement services after accepting payment from consumers for such services, violated Section 201-3 of the Consumer Protection Law as defined by Section 201-2(4):

(ii) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;

(v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;

(ix) Advertising goods or services with intent not to sell them as advertised;

(xiv) Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to or after a contract for the purchase of goods or services is made; and,

(xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

73 P.S. § 201-3 and § 201-2(4), (ii), (v), (ix), (xiv) and (xxi).

WHEREFORE, the Commonwealth respectfully prays that this Honorable Court find that the Defendants engaged in the willful use of unfair, fraudulent, and/or deceptive business practices declared to be unlawful and in violation of the Consumer Protection Law, as alleged, and:

- a. order the Defendants to pay restitution to all consumers who have been damaged by Defendants' unfair or deceptive business practices, as permitted by Section 4.1 of the Consumer Protection Law, 73 P.S. § 201-4.1;
- b. permanently enjoin Defendants, individually or through any business entity, from advertising, offering for sale or selling any home improvement/construction goods or services in the Commonwealth of Pennsylvania;
- c. permanently enjoin Defendants, individually or through any business entity, from owning or operating any home improvement/construction business in the Commonwealth of Pennsylvania;

- d. assess civil penalties against the Defendants for violations of the Consumer Protection Law, as permitted by Section 8(a) of the Consumer Protection Law, 73 P.S. §201-8(a);
- e. award the Commonwealth its costs of investigation, attorney's fees and costs of this action; and
- f. order any other relief this Honorable Court deems appropriate.

COUNT II—VIOLATION OF THE CONSUMER PROTECTION LAW
DEFENDANTS FAILED TO INCLUDE IN THEIR CONTRACTS THE PROPER
“BUYER’S RIGHT TO CANCEL” AND “NOTICE OF CANCELLATION” AND
FAILED TO INFORM CONSUMERS OF THEIR “RIGHT TO CANCEL”

- 15. Paragraphs 1 through 14 are incorporated herein as if fully set forth.
- 16. According to Section 201-7(a) of the Consumer Protection Law:

Where goods or services having a sale price of twenty-five dollars (\$25) or more are sold or contracted to be sold to a buyer, as a result of, or in connection with, a contact with or call on the buyer or resident at his residence either in person or by telephone, that consumer may avoid the contract or sale by notifying, in writing, the seller within three full business days following the day on which the contract or sale was made and by returning or holding available for return to the seller, in its original condition, any merchandise received under the contract or sale. Such notice of rescission shall be effective upon depositing the same in the United States mail or upon other service which gives the seller notice of rescission.

73 P.S. § 201-7(a).

- 17. According to Section 201-7(b)(1) of the Consumer Protection Law, the buyer must be provided with a contract which contains in immediate proximity to the space reserved in the contract for the signature of the buyer in bold face type of a minimum size of ten points, a statement in substantially the following form:

“You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this

transaction. See the attached notice of cancellation form for an explanation of this right.”

73 P.S. § 201-7(b)(1).

18. According to Section 201-7(b)(2) of the Consumer Protection Law, a duplicate “Notice of Cancellation” shall be attached to the contract, easily detachable, and shall contain in ten-point bold face type the following information:

Notice of Cancellation

(Enter Date of Transaction)

You may cancel this transaction without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten business days following the receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller’s expense and risk.

If you do not make the goods available to the seller and the seller does not pick them up within twenty days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under this contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to (name of seller), at (address of seller’s place of business) not later than midnight of (date).

I hereby cancel this transaction.

(Date)

Buyer's Signature

73 P.S. § 201-7(b)(2).

19. According to Section 201-7(d) of the Consumer Protection Law, each buyer shall be informed of the right to cancel at the time he or she signs the contract. 73 P.S. § 201-7(d).
20. According to Section 201-7(e) of the Consumer Protection Law, the cancellation period shall not begin to run until the buyer has been informed of his right to cancel and has been provided with copies of the "Notice of Cancellation." 73 P.S. § 201-7(e).
21. Defendants contracted with consumers for goods and services with a sale price greater than twenty-five dollars (\$25.00).
22. Defendants contracted with consumers as a result of, or in connection with, a contact with the consumer at his or her residence either in person or on the telephone.
23. Defendants' contract failed to properly include a Statement of the "Buyer's Right to Cancel" and "Notice of Cancellation," as required by 73 P.S. § 201-7. Attached hereto as Exhibit "1," is a true and correct exemplary copy of Defendants' standard contract.
24. Although Defendants' standard written contract references receipt of two completed copies of the "Notice of Cancellation," consumers did not receive such notice.
25. As such, Defendants' conduct violated Section 201-3 of the Consumer Protection Law as defined by Section 201-2(4)(xxi), 73 P.S. §§ 201-3 and 201-2(4)(xxi).

WHEREFORE, the Commonwealth respectfully prays that this Honorable Court find that the Defendants engaged in the willful use of unfair, fraudulent, and/or deceptive business

practices declared to be unlawful and in violation of the Consumer Protection Law, as alleged, and:

- a. order the Defendants to pay restitution to all consumers who have been damaged by Defendants' unfair or deceptive business practices, as permitted by Section 4.1 of the Consumer Protection Law, 73 P.S. § 201-4.1;
- b. permanently enjoin Defendants, individually or through any business entity, from advertising, offering for sale or selling any home improvement/construction goods or services in the Commonwealth of Pennsylvania;
- c. permanently enjoin Defendants, individually or through any business entity, from owning or operating any home improvement/construction business in the Commonwealth of Pennsylvania;
- d. assess civil penalties against the Defendants for violations of the Consumer Protection Law, as permitted by Section 8(a) of the Consumer Protection Law, 73 P.S. §201-8(a);
- e. award the Commonwealth its costs of investigation, attorney's fees and costs of this action; and
- f. order any other relief this Honorable Court deems appropriate.

COUNT III
INDIVIDUAL LIABILITY OF BENJAMIN J. SEIDEL FOR VIOLATIONS OF
THE CONSUMER PROTECTION LAW

26. Paragraphs 1 through 25 are incorporated herein as if fully set forth.
27. Defendant Benjamin J. Seidel authored, approved, endorsed, formulated, directed, controlled, and/or participated in the conduct alleged herein.

28. As such, Defendant Benjamin J. Seidel's conduct, through the actions of Defendant Home Pro, violated Section 201-3 of the Consumer Protection Law as defined by Section 201-2(4) (ii), (v), (ix), (xiv), and (xxi) and Section 201-7, 73 P.S. §201-3, §201-2(4) (ii), (v), (ix), (xiv), and (xxi) and § 201-7.

WHEREFORE, the Commonwealth respectfully prays that this Honorable Court find that Benjamin J. Seidel engaged in the willful use of unfair, fraudulent, and/or deceptive business practices declared to be unlawful and in violation of the Consumer Protection Law, as alleged, and:

- a. order Defendant Benjamin J. Seidel to pay restitution to all consumers who have been damaged by Defendants' unfair or deceptive business practices, as permitted by Section 4.1 of the Consumer Protection Law, 73 P.S. § 201-4.1;
- b. permanently enjoin Benjamin J. Seidel, individually or through any business entity, from advertising, offering for sale or selling any home improvement/construction goods or services in the Commonwealth of Pennsylvania;
- c. permanently enjoin Benjamin J. Seidel, individually or through any business entity, from owning or operating any home improvement/construction business in the Commonwealth of Pennsylvania;
- d. assess civil penalties against Benjamin J. Seidel for violations of the Consumer Protection Law, as permitted by Section 8(a) of the Consumer Protection Law, 73 P.S. §201-8(a);
- e. award the Commonwealth its costs of investigation, attorney's fees and costs of this action; and
- f. order any other relief this Honorable Court deems appropriate.

COUNT IV
INDIVIDUAL LIABILITY OF TROY D. SHOPE FOR VIOLATIONS OF
THE CONSUMER PROTECTION LAW

29. Paragraphs 1 through 28 are incorporated herein as if fully set forth.
30. Defendant Troy D. Shope authored, approved, endorsed, formulated, directed, controlled, and/or participated in the conduct alleged herein.
31. As such, Defendant Troy D. Shope's conduct, through the actions of Defendant Home Pro, violated Section 201-3 of the Consumer Protection Law as defined by Section 201-2(4) (ii), (v), (ix), (xiv), and (xxi) and Section 201-7, 73 P.S. §201-3, §201-2(4) (ii), (v), (ix), (xiv), and (xxi) and § 201-7.

WHEREFORE, the Commonwealth respectfully prays that this Honorable Court find that Troy D. Shope engaged in the willful use of unfair, fraudulent, and/or deceptive business practices declared to be unlawful and in violation of the Consumer Protection Law, as alleged, and:

- a. order Defendant Troy D. Shope to pay restitution to all consumers who have been damaged by Defendants' unfair or deceptive business practices, as permitted by Section 4.1 of the Consumer Protection Law, 73 P.S. §201-4.1;
- b. permanently enjoin Troy D. Shope, individually or through any business entity, from advertising, offering for sale or selling any home improvement/construction goods or services in the Commonwealth of Pennsylvania;
- c. permanently enjoin Troy D. Shope, individually or through any business entity, from owning or operating any home improvement/construction business in the Commonwealth of Pennsylvania;

- d. assess civil penalties against Troy D. Shope for violations of the Consumer Protection Law, as permitted by Section 8(a) of the Consumer Protection Law, 73 P.S. §201-8(a);
- e. award the Commonwealth its costs of investigation, attorney's fees and costs of this action; and
- f. order any other relief this Honorable Court deems appropriate.

Date: _____

Respectfully submitted,

THOMAS W. CORBETT, JR.
ATTORNEY GENERAL

By: _____

Amy L. Schulman
Deputy Attorney General

Jesse F. Harvey
Senior Deputy Attorney General

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(412) 565-5134

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Plaintiff,	:	
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v.	:	
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HOME PRO IMPROVEMENTS, LLC;	:	
BENJAMIN J. SEIDEL, Individually	:	
and as Owner of HOME PRO	:	
IMPROVEMENTS, LLC; and TROY D.	:	
SHOPE, Individually and as Owner of	:	
HOME PRO IMPROVEMENTS, LLC,	:	
	:	
Defendants.	:	

VERIFICATION

I, Darlene Westfall, being duly sworn according to law, hereby state that I am an Agent Supervisor with the Office of Attorney General, Bureau of Consumer Protection, Pittsburgh Regional Office, that I am authorized to make this verification on behalf of the Plaintiff, and that the facts in the foregoing Complaint in Equity are true and correct to the best of my knowledge, information, and belief.

Darlene D. Westfall
Agent Supervisor

Sworn and Subscribed to before me
this day of , 2008.

Notary Public (SEAL)