

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

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

Plaintiff,

v.

JAMES A. BERINTI, Individually and
d/b/a J. ANTHONY ROOFING

Defendant.

CIVIL DIVISION

No Real Estate

No.

Code: 020

COMPLAINT IN EQUITY

Writ of Service Waived

Filed on Behalf of Plaintiff,
COMMONWEALTH OF
PENNSYLVANIA

Counsel of Record for this Party:

Marcia L. Telek DePaula
Senior Deputy Attorney General
PA I.D. No. 74595

Office of Attorney General
Bureau of Consumer Protection
6th Floor, Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219
412-565-5134

**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
ALLEGHENY COUNTY BAR ASSOCIATION
414 GRANT STREET, 9TH FLOOR, ROOM 920
PITTSBURGH, PENNSYLVANIA 15219
TELEPHONE: 412-261-5555

Marcia L. Telek DePaula
Senior Deputy Attorney General

Office of Attorney General
Bureau of Consumer Protection
6th Floor, Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219
412-565-5134

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

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

CIVIL DIVISION

No Real Estate

Plaintiff,

No.

v.

JAMES A. BERINTI, Individually and
d/b/a J. ANTHONY ROOFING

Defendant.

COMPLAINT IN EQUITY

The Commonwealth of Pennsylvania through its Attorney General, Thomas W. Corbett, Jr. ("Commonwealth"), brings this action to redress violations of the Unfair Trade Practices and Consumer Protection Law, Act of December 17, 1968, P. L. No. 1224, as amended, 73 P.S. §201-1 *et seq.* ("Consumer Protection Law") and respectfully represents the following:

JURISDICTION

1. This Court has original jurisdiction over this action pursuant to Section 761(a)(2) of the Judicial Code, 42 Pa. C. S. A. §761(a)(2).

VENUE

2. Venue lies with this Court pursuant to Pa. R. C. P. 1503(b).

PARTIES

3. Plaintiff is the Commonwealth of Pennsylvania, acting by Attorney General Thomas W. Corbett, Jr., through the Bureau of Consumer Protection with offices located at 6th Floor, Manor Complex, 564 Forbes Avenue, Pittsburgh, Pennsylvania 15219.

4. Defendant JAMES A. BERINTI, Individually and doing business as, J. ANTHONY ROOFING, engages or has been engaged in advertising, offering for sale and selling construction services from his principal places of business located at 702 Sheridan Street, Monongahela, Pennsylvania, 15063 and 6535 Library Road, South Park, Pennsylvania, 15129. Defendant BERINTI currently resides at 372 Pennsylvania Avenue, Charleroi, Pennsylvania 15022.

FACTS

5. Paragraphs 1 through 4 are incorporated herein as if fully set forth.

6. From at least 2002 to the present, Defendant has entered into contracts with consumers for home improvement construction services, including but not limited to, installing roofing, gutters/downspouts, soffit, and a chimney liner and constructing a retaining wall.

7. Defendant has entered into contracts with consumers at their residences for amounts in excess of \$25.00 without providing a "Notice of Cancellation" in his contracts. (A copy of Defendant's contract is attached hereto and made a part hereof as Exhibit "A".)

8. On November 29, 2000 and on June 5, 2003, the Commonwealth sent a letter to Defendant informing him that he was required to include a "Buyer's Right to

Cancel" and "Notice of Cancellation" in his contracts. (Copies of the letters are attached hereto and made a part hereof as Exhibits "B-1" and "B-2" respectively.)

9. Defendant's contract states that "All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner."

10. The Commonwealth has received at least six (6) consumer complaints regarding Defendant's business practices.

11. Consumers' complaints include, but are not limited to, Defendant's failure to perform and/or complete work and Defendant's performance of services in an unworkmanlike manner, as more fully set forth below.

DONNA BARRETT

12. On December 2, 2002, consumer Donna Barrett contracted with Defendant to install soffit/fascia, demolish existing porch roof and gutters and rebuild them. (A copy of the contract is attached hereto and made a part hereof as Exhibit "C".)

13. Defendant's contract with consumer Barrett listed the amount of \$6,200 for the services set forth in Exhibit "C".

14. Consumer Barrett paid Defendant \$3,100 as a down payment. (A copy of the check is attached hereto and made a part hereof as Exhibit "D".)

15. Defendant never returned to perform the services.

16. Consumer Barrett was listed as a creditor in Defendant's Chapter 7 Bankruptcy filed in the Western District of Pennsylvania, Case No. 03-25095-BM. Defendant's Chapter 7 Bankruptcy was discharged on December 4, 2003.

JENNIFER BEZEK

17. On February 28, 2003, consumer Jennifer Bezek contracted with Defendant to repair gutters and rebuild/repair soffit in overhang. (A copy of the contract is attached hereto and made a part hereof as Exhibit "E".)

18. Defendant's contract with consumer Bezek listed the amount of \$430 for the services set forth in Exhibit "E".

19. Consumer Bezek paid Defendant \$200 as a down payment.

20. Defendant never returned to perform the services.

21. The Commonwealth is seeking a refund of \$200 for consumer Bezek.

MARY DUNLAP

22. On December 13, 2002, consumer Mary Dunlap contracted with Defendant to cement the inside and outside of her chimney and to install a new liner in the flu of the chimney. (A copy of the contract is attached hereto and made a part hereof as Exhibit "F".)

23. Defendant's contract with consumer Dunlap listed the amount of \$1,200 for the services set forth in Exhibit "F".

24. Consumer Dunlap paid Defendant \$1,200. (Copies of the checks are attached hereto and made a part hereof as Exhibit "G".)

25. Defendant performed the services in an unworkmanlike manner by attaching a chimney cap with a piece of pipe, which hung in the chimney unattached.

26. According to Air Conditioning & Heating Consultants, a chimney liner, which is a flexible metal pipe, should be installed from the top of the chimney extending

down to the basement where it is to be connected to the furnace. (A copy of the opinion letter is attached hereto and made a part hereof as Exhibit "H.")

27. The Commonwealth is seeking a refund of \$1,200 for consumer Dunlap.

FERN GARITTE

28. On June 17, 2002, consumer Fern Garitte contracted with Defendant to demolish an existing wall and build a new retaining wall. (A copy of the contract is attached hereto and made a part hereof as Exhibit "I".)

29. Defendant's contract with consumer Garitte listed the amount of \$3,900 for the services set forth in Exhibit "I".

30. Consumer Garitte paid Defendant \$3,900. (Copies of the checks are attached hereto and made a part hereof as Exhibit "J".)

31. Defendant tore down part of the existing wall, but failed to return to complete the services.

32. Consumer Garitte was awarded a judgment in the amount of \$4,100.50 against Defendant from District Magistrate Richard King on July 9, 2003.

33. Defendant has failed to satisfy the judgment.

34. The Commonwealth is seeking a refund of \$3,900 for consumer Garitte.

EDWARD MCHUGH

35. On October 9, 2002, consumer Edward McHugh contracted with Defendant to install new shingles on the roof of his house, including his main roof, porch roof and bay roofs. (A copy of the contract is attached hereto and made a part hereof as Exhibit "K".)

36. Defendant's contract with consumer McHugh listed the amount of \$4,600 for the services set forth in Exhibit "K".

37. Consumer McHugh paid Defendant \$4,600.

38. Defendant performed the services in an unworkmanlike manner by failing to securely attach the shingles, resulting in shingles falling off during a rainfall.

39. Defendant failed to install shingles above the fireplace and bay window.

40. Consumer McHugh was listed as a creditor in Defendant's Chapter 7 Bankruptcy filed in the Western District of Pennsylvania, Case No. 03-25095-BM. Defendant's Chapter 7 Bankruptcy was discharged on December 4, 2003.

MARGARET SIMS

41. On June 3, 2004, consumer Margaret Sims contracted with Defendant to paint gutters, valleys, flashings and vent pipes, repair/replace all slates on main roof, and install downspouts. (A copy of the contract is attached hereto and made a part hereof as Exhibit "L".)

42. Defendant's contract with consumer Sims listed the amount of \$1,900 for the services set forth in Exhibit "L".

43. Consumer Sims paid Defendant \$1,000. (Copies of the checks are attached hereto and made a part hereof as Exhibit "M".)

44. Defendant painted a pipe and repaired one area on the roof.

45. Defendant failed to complete the remaining services, including, installing the downspouts, painting the gutters, valleys, flashings and vent pipes and repairing the roof, where needed.

46. The Commonwealth is seeking a refund of \$1,000 for consumer Sims.

BASIS OF LEGAL ACTION

47. Paragraphs 1 through 46 are incorporated herein as if fully set forth.

48. Pursuant to Section 201-2(4)(iii), (v), (vii), (ix), (xiv), (xvi) and (xxi) of the Consumer Protection Law, the following acts or practices are defined as unfair or deceptive:

- (iii) causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another;
- (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;
- (vii) representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
- (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;
- (xvi) making repairs, improvements or replacements on tangible, real or personal property, of a nature or quality inferior to or below the standard of that agreed to in writing;
- (xxi) engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

73 P.S. §201-2(4)(iii), (v), (vii), (ix), (xiv), (xvi) and (xxi).

49. The Commonwealth has reason to believe that the Defendant has used, is using, or is about to use methods, acts, or practices declared unlawful by the Consumer Protection Law at Section 201-3, 73 P.S. Section § 201-3.

50. The Commonwealth believes that the public interest is served by seeking before this Honorable Court a permanent injunction to restrain the methods, acts, or practices hereinafter set forth, as well as restitution, civil penalties, and costs.

51. At all times material hereto, the unlawful methods, acts or practices complained of herein have been willfully used by the Defendant.

52. Citizens of the Commonwealth of Pennsylvania are suffering and will continue to suffer irreparable harm unless the acts or practices complained of are immediately enjoined.

**COUNT I - PERFORMING SERVICES IN
AN UNWORKMANLIKE MANNER**

53. Paragraphs 1 through 52 are incorporated herein as if fully set forth.

54. Defendant represents orally that his services will be performed in a workmanlike manner.

55. Defendant represents in his written contract that his services will be performed in a workmanlike manner.

56. Defendant has performed construction services in an unworkmanlike manner for consumers, including but not limited to, Mary Dunlap and Edward McHugh.

57. As such, Defendant's conduct violates Section 201-3 of the Consumer Protection Law as defined by Section 201-2(4)(iii), (v), (vii), (ix), (xiv), (xvi) and (xxi), 73 P.S. §201-3 and §201-2(4)(iii), (v), (vii), (ix), (xiv), (xvi) and (xxi).

WHEREFORE, the Commonwealth prays this Court for an order permanently enjoining the Defendant from engaging in the methods, acts, or practices set forth herein as well as directing Defendant to make restitution, directing forfeiture of Defendant's right or ability under the law to conduct business as a provider of construction services in

the Commonwealth of Pennsylvania, and directing Defendant to pay civil penalties and costs as requested in the prayer for relief listed below.

COUNT II - FAILING TO PERFORM AND/OR COMPLETE SERVICES

58. Paragraphs 1 through 57 are incorporated herein as if fully set forth.

59. By entering into contracts with consumers, Defendant represents that he will perform the contracted for services.

60. By entering into contracts with consumers, Defendant represents that he will complete the contracted for services.

61. Defendant has accepted money from consumers, without completing contracted for services, including but not limited to, consumers Donna Barrett, Jennifer Bezek, Fern Garitte, Edward McHugh and Margaret Sims.

62. As such, Defendant's conduct violates Section 201-3 of the Consumer Protection Law as defined by Section 201-2(4)(v), (ix) and (xxi), 73 P.S. §201-3 and §201- 2(4)(v), (ix) and (xxi).

WHEREFORE, the Commonwealth prays this Court for an order permanently enjoining the Defendant from engaging in the methods, acts, or practices set forth herein as well as directing Defendant to make restitution, directing forfeiture of Defendant's right or ability under the law to conduct business as a provider of construction services in the Commonwealth of Pennsylvania, and directing Defendant to pay civil penalties and costs as requested in the prayer for relief listed below.

COUNT III - FAILING TO PROVIDE THE PROPER NOTICE OF CANCELLATION

63. Paragraphs 1 through 62 are incorporated herein as if fully set forth.

64. According to Section 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).

65. According to Section 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).

66. According to Section 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 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 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 the 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).

67. According to Section 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).

68. Defendant's contracts are provided to consumers at their residences.

69. Defendant's contracts are in an amount greater than \$25.00.

70. Defendant's contracts fail to include a "Buyer's Right to Cancel" or "Notice of Cancellation."

71. Section 7 of the Consumer Protection Law requires a business to refund the entire amount charged to a consumer when the consumer does not receive the proper "Buyer's Right to Cancel" and/or "Notice of Cancellation."

72. On November 29, 2000 and on June 5, 2003, the Commonwealth sent a letter to Defendant informing him that he was required to include a "Buyer's Right to Cancel" and "Notice of Cancellation" in his contracts. (Copies of the letters are attached hereto and made a part hereof as Exhibits "B-1" and "B-2" respectively.)

73. After the warning letter was sent to Defendant in June 5, 2003, he continued to use a contract without the proper "Notice of Cancellation," including but not limited to the contracts for consumer Margaret Sims.

74. As such, Defendant's conduct violates Section 201-3 of the Consumer Protection Law as defined by Section 201-2(4)(xxi) and Section 201-7, 73 P.S. §201-3, §201-2(4)(xxi) and §201-7.

WHEREFORE, the Commonwealth prays this Court for an order permanently enjoining the Defendant from engaging in the methods, acts, or practices set forth herein as well as directing Defendant to make restitution, directing forfeiture of Defendant's right or ability under the law to conduct business as a provider of construction services in the Commonwealth of Pennsylvania, and directing Defendant to pay civil penalties and costs as requested in the prayer for relief listed below.

COUNT IV – FAILING TO REGISTER A FICTITIOUS NAME

75. Paragraphs 1 through 74 are incorporated herein as if fully set forth.

76. Defendant JAMES A. BERINTI does business under the fictitious name J. ANTHONY ROOFING.

77. The fictitious name J. ANTHONY ROOFING is not registered with the Pennsylvania Department of State.

78. As such, Defendant's conduct violates the Fictitious Names Act, 54 Pa. C.S.A. §301 et seq. and 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 prays this Court for an order permanently enjoining the Defendant from engaging in the methods, acts, or practices set forth herein as well as directing Defendant to make restitution, directing forfeiture of Defendant's right or ability under the law to conduct business as a provider of construction services in the Commonwealth of Pennsylvania, and directing Defendant to pay civil penalties and costs as requested in the prayer for relief listed below.

THE COURT'S POWER TO GRANT RELIEF

79. Section 3 of the Consumer Protection Law, 73 P.S. §201-3, declares unfair and deceptive acts or practices to be unlawful.

80. Section 4 of the Consumer Protection Law, 73 P.S. §201-4, empowers the Attorney General to bring actions in the name of the Commonwealth to restrain persons by temporary and permanent injunction from using any act or practices declared to be unlawful by Section 3 of the Consumer Protection Law, 73 P.S. §201-3.

81. Section 4.1 of the Consumer Protection Law, 73 P.S. §201-4.1, provides that "whenever any court issues a permanent injunction to restrain and prevent violations of this act...the court may in its discretion direct that the defendant or defendants restore to any person in interest any moneys or property...which may have been acquired by any violations of this act..."

82. Section 8 of the Consumer Protection Law, 73 P.S. §201-8, permits the Commonwealth to recover a civil penalty not exceeding one thousand dollars (\$1,000.00) per violation and three thousand dollars (\$3,000.00) per violation if a victim is sixty years of age or older, in addition to other relief granted, if the court finds that a person, firm or corporation is wilfully using or has wilfully used a method, act or practice declared unlawful by Section 3 of the Consumer Protection Law, 73 P.S. §201-3.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth respectfully prays that this Honorable Court find the Defendant to be 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. permanently enjoin the Defendant, his agents, representatives, servants and employees from engaging in any conduct complained of herein or any other conduct in violation of the Consumer Protection Law, as permitted by Section 201-4 of the Consumer Protection Law, 73 P.S. §201-4;

b. permanently enjoin the Defendant from engaging in any construction services, including but not limited to, as an employee, independent contractor, and/or

owner or officer of any business entity, as permitted by Section 201-4 of the Consumer Protection Law, 73 P.S. §201-4;

c. order the Defendant to pay restitution to all consumers as permitted by Section 4.1 of the Consumer Protection Law, 73 P.S. §201-4.1;

d. assess civil penalties against the Defendant for violations of the Consumer Protection Law, as permitted by Section 8 of the Consumer Protection Law, 73 P.S. §201-8;

e. award the Commonwealth its costs of investigation, attorney's fees and costs of this action; a

f. order any other relief this Honorable Court deems appropriate.

Date: February _____, 2006

Respectfully submitted,

THOMAS W. CORBETT, JR.
ATTORNEY GENERAL

Frank T. Donaghue
Chief Deputy Attorney General

BY: _____

Marcia L. Telek DePaula
Senior Deputy Attorney General

OFFICE OF ATTORNEY GENERAL
6th Floor, Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219
412-565-5134

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

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

CIVIL DIVISION

Plaintiff,

No.

v.

JAMES A. BERINTI, Individually and
d/b/a J. ANTHONY ROOFING

Defendant.

VERIFICATION

I, Darlene Westfall, being duly sworn according to law, hereby state that I am an Agent 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 Westfall
Agent
Bureau of Consumer Protection

Sworn and Subscribed to before me

this day of , 2006.

Notary Public (SEAL)