

IN THE COURT OF COMMON PLEAS OF
LANCASTER COUNTY, PENNSYLVANIA

CIVIL ACTION

COMMONWEALTH OF PENNSYLVANIA	:	FILE NO.
Acting by ATTORNEY GENERAL	:	
THOMAS W. CORBETT, JR.	:	
	:	
PLAINTIFF	:	
v.	:	
	:	
BENJAMIN BOYER, Individually	:	
and d/b/a BOYER'S CONSTRUCTION	:	
	:	
DEFENDANTS	:	

KATHRYN H. SILCOX
DEPUTY ATTORNEY GENERAL
ATTORNEY ID NO. 81735
OFFICE OF ATTORNEY GENERAL
BUREAU OF CONSUMER PROTECTION
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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 Petition and Notice are served, by entering 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 money claimed in the Petition 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 OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICES 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.

LANCASTER BAR ASSOCIATION
LAWYER REFERRAL SERVICE
28 EAST ORANGE STREET
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Telephone: 717-393-0737

PENNSYLVANIA BAR ASSOCIATION
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100 SOUTH STREET, P.O. BOX 186
HARRISBURG, PA 17108
Telephone: 800-692-7375

DATE: _____

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COMPLAINT IN EQUITY AND
PETITION FOR PERMANENT INJUNCTION

AND NOW, this _____ day of _____, 2006, comes the Commonwealth of Pennsylvania, acting by the Office of Attorney General, through the Bureau of Consumer Protection (hereinafter referred to as "Commonwealth"), who brings this action pursuant to the Unfair Trade Practices and Consumer Protection Law, Act of December 17, 1968, P.L. 1224, No. 387, as amended by the Act of November 24, 1976, P.L. 1166, No. 260, as amended by the Act of December 4, 1996, P.L. 906, No.146, 73 P.S. §§ 201-1 – 201-9.2, and as amended by the Act of June 25, 1997, P.L. 287, No. 27, 73 P.S. §§ 201-1 – 201-9.3 (hereinafter referred to as "Consumer Protection Law"), to restrain by Permanent Injunction unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce declared unlawful by § 201-3 of the Consumer Protection Law.

In support thereof, the Commonwealth respectfully represents the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Section 931 of the Judicial Code. 42 Pa. C.S.A. § 931.
2. Venue is proper in this action pursuant to Section 931 of the Judicial Code. 42 Pa. C.S.A. § 931.

PARTIES

3. Plaintiff is the Commonwealth of Pennsylvania, acting through Attorney General Thomas W. Corbett, Jr., through the Bureau of Consumer Protection, Harrisburg Regional Office, 301 Chestnut Street, Suite 105, Harrisburg, Pennsylvania 17101, on behalf of the citizens of the Commonwealth.
4. Defendants, Benjamin Boyer, Individually and d/b/a Boyer's Construction, hereinafter "Defendants" maintain a principal place of business located at 202 S. Market Street, Elizabethtown, Lancaster County, Pennsylvania, 17022.
5. Defendants, directly or through their agents, are engaged in trade and commerce throughout the Commonwealth by providing home construction services such as installation of new roofs and skylights.

BACKGROUND

6. The Commonwealth has reason to believe that the Defendants have used methods, acts or practices declared unlawful by §201-3 of the Consumer Protection Law.
7. Pursuant to §201-2(4)(ii), (v), (vii), (xvi) and (xxi) of the Consumer Protection Law, the following acts or practices are defined as unfair or deceptive:

- (ii) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, 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;
- (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;
- (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) (ii), (v), (vii), (xvi) and (xxi).

8. Section 201-4 of the Consumer Protection Law provides, in pertinent part, that if the Attorney General has reason to believe that any person is using or about to use any method, act or practice declared unlawful by Section 201-3 of the Consumer Protection Law, the Attorney General may bring an action to impose a civil penalty and to seek other relief, including injunctive relief, under the Consumer Protection Law. 73 P.S. § 201-4.
9. The Commonwealth believes that the public interest is served by seeking a Permanent Injunction to restrain the methods, acts and practices of the Defendants as hereinafter set forth. Further, the Commonwealth requests injunctive relief, civil penalties, costs and other appropriate equitable relief as redress for violations of the Consumer Protection Law.
10. At all times relevant and material hereto the unfair methods, acts and practices complained of herein have been willfully used by Defendants.

11. The Commonwealth is informed, believes and therefore avers that Defendants directed, supervised, controlled, approved, formulated, authorized, ratified, benefited from and/or otherwise participated in the acts and practices alleged herein.

COUNT I
FAILURE TO COMPLETE WORK AS PROMISED

12. Paragraphs 1 through 11 of the foregoing complaint are incorporated herein by reference.
13. The Defendants have entered into contracts with consumers at their residences for construction services, including the repair and/or replacement of roofs, siding, skylights, gutters, decks and other painting services.
14. Plaintiff is advised, believes and therefore avers that Defendants represented to the consumers that they could provide skilled and competent home improvement contracting and other work.
15. Plaintiff is advised, believes and therefore avers that Defendants did not fully perform the services contracted for with consumers or performed the services in a shoddy or unworkmanlike manner.
16. Plaintiff is advised, believes and therefore avers that Defendants have failed to satisfactorily complete their contractual obligations.
17. Plaintiff is advised, believes, and therefore avers that Defendants, despite being contacted by consumers requesting that the jobs contracted for be satisfactorily completed or their money returned, have ignored the consumers' requests or failed to satisfactorily address the complaints.

18. Plaintiff is advised, believes, and therefore avers that Defendants have failed to begin work and complete work as agreed to in a timely manner on contracts entered into with consumers after taking substantial payments from the consumers.
19. Consumers have suffered harm as the result of the Defendants' acts and practices due to the fact that they paid the Defendants for work to be completed on their homes which they failed to provide or provided in a shoddy manner. The impact of the Defendants' practices are illustrated in the following examples:
 - a. Consumer Caridad Lopez paid Four Thousand Seven Hundred Twenty Five Dollars (\$4,725.00) to Defendants for a new roof, gutters and to repoint the chimney. Despite the Defendants' promises, they have failed to either to finish the job and to repay the deposits.
 - b. Consumer Jan Hastings paid Defendants a down payment of One Thousand Four Hundred Seventy Five Dollars (\$1,475.00) to replace the roof. Although the Defendants promised Hastings work would be initiated over seven different start dates, the Defendants have still failed to begin the work.
 - c. Consumer Susan Shellenberger paid Defendants Three Thousand Six Hundred Dollars (\$3,600.00) for a new roof and new vinyl siding. The work was not completed in a timely manner as agreed to between the parties and the siding has yet to be replaced.
20. By conducting the aforesaid acts and practices, the Defendants have engaged in unfair methods of competition and/or unfair and deceptive acts or practices prohibited by Section 201-3 of the Consumer Protection Law, including, without limitation:

- (a) Causing a likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services in violation of 73 P.S. § 201-2(4)(ii);
- (b) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that person has a sponsorship, approval, status, affiliation, or connection that he does not have in violation of 73 P.S. § 201-2(4)(v);
- (c) 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 in violation of 73 P.S. § 201-2(4)(vii);
- (d) 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 in violation of 73 P.S. § 201-2(4)(xvi); and,
- (e) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding in violation of 73 P.S. § 201-2(4)(xxi).

21. The acts, practices and methods of competition set forth above are unlawful and in violation of § 201-3 of the Consumer Protection Law in that they constitute “unfair methods of competition” and “unfair or deceptive acts or practices” in the conduct of trade and commerce set forth in § 201-2(4) of the Consumer Protection Law.

22. Residents of the Commonwealth of Pennsylvania are suffering and will continue to suffer irreparable harm unless the acts and practices complained of herein are permanently enjoined.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth respectfully requests this Honorable Court to issue an Order:

- A. Permanently enjoining Defendants, their agents, successors, assignees and employees acting directly or through any corporate device from engaging in the aforementioned acts, practices, methods of competition or any other practice violative of the Consumer Protection Law;
- B. Directing the Defendants to pay restitution to consumers who have filed or come forward to file verified consumer complaints against the Defendants with the Pennsylvania Office of Attorney General regarding the business practices complained of herein;
- C. Directing the Defendants to disgorge and forfeit all profits they have derived as a result of their unfair and deceptive practices set forth in this Complaint;
- D. Directing the Defendants to pay civil penalties in the amount of One Thousand and 00/100 Dollars (\$1,000.00) for each and every violation of the Consumer Protection Law and increased to Three Thousand and 00/100 Dollars (\$3,000.00) for each violation involving a consumer 60 years of age and older;
- E. Directing the Defendants to pay the Commonwealth for the costs of its investigation and prosecution of this action;
- F. Directing the Defendants to forfeit their right or franchise to engage in the home improvement contracting business within the Commonwealth of Pennsylvania until such time as all monies have been paid for restitution, costs and civil penalties; and,
- G. Providing any other such relief as the Court may deem necessary and appropriate.

COUNT II
FAILURE TO PROVIDE PROPER NOTICE OF RIGHT TO CANCEL

23. Paragraphs 1 through 22 of the foregoing complaint are incorporated herein by reference.
24. In conducting business within the Commonwealth, the Defendants executed contracts with consumers in the consumers' homes or were due to a call or contact at the home.
25. Defendants sell or contract to sell home improvement services to consumers having a sales price in excess of twenty-five dollars (\$25.00).
26. Defendants' contract fails to refer to a notice of cancellation or an explanation of the right to cancel as provided for in § 201-7 of the Consumer Protection Law. A true and correct copy of the contract is hereto attached as Exhibit A.
27. The acts, practices and methods of competition set forth above are unlawful and in violation of § 201-3 of the Consumer Protection Law in that they constitute "unfair methods of competition" and "unfair or deceptive acts or practices" in the conduct of trade and commerce set forth in § 201-2(4) of the Consumer Protection Law.
28. Residents of the Commonwealth of Pennsylvania are suffering and will continue to suffer irreparable harm unless the acts and practices complained of herein are permanently enjoined.

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- C. Directing the Defendants to disgorge and forfeit all profits they have derived as a result of their unfair and deceptive practices set forth in this Complaint;
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- G. Providing any other such relief as the Court may deem necessary and appropriate.

DATE: _____

Respectfully submitted,

BY: THOMAS W. CORBETT, JR.
THOMAS W. CORBETT, JR.
ATTORNEY GENERAL

FRANK T. DONAGHUE
FRANK T. DONAGHUE
CHIEF DEPUTY ATTORNEY GENERAL

KATHRYN H. SILCOX
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