

IN THE ERIE COUNTY COURT OF COMMON PLEAS

COMMONWEALTH OF PENNSYLVANIA :
ACTING BY ATTORNEY GENERAL :
THOMAS W. CORBETT, JR. :
 :
Plaintiff :
 :
v. :
 :
BRYANT HAMMOND, d/b/a WINDOWS :
EXPRESS :
 :
Defendant : NO.

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 by 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.

Erie County Bar Association
Lawyer Referral Service
302 West 9th Street
Erie, PA 16502
(814) 459-4411

Northwestern Legal Services
1001 State Street, 12th Floor
Erie, PA. 16501
(814) 452-6957

Carm Presogna
Senior Deputy Attorney General
Attorney ID # 26465
Bureau of Consumer Protection
1001 State Street, Suite 1009
Erie, Pa. 16501
814-871-4371

IN THE ERIE COUNTY COURT OF COMMON PLEAS

COMMONWEALTH OF PENNSYLVANIA :
ACTING BY ATTORNEY GENERAL :
THOMAS W. CORBETT, JR. :
 :
Plaintiff :
 :
v. :
 :
BRYANT HAMMOND, d/b/a WINDOWS :
EXPRESS :
 :
Defendant : NO.

COMPLAINT

AND NOW, comes the Commonwealth of Pennsylvania acting by Attorney General Thomas W. Corbett, Jr., through the Bureau of Consumer Protection (hereinafter Commonwealth” or “Plaintiff”), and brings this action pursuant to the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 et seq. (hereinafter referred to as the “Consumer Protection Law”) to restrain by injunction, unfair methods of competition or unfair or deceptive acts or practices in the conduct of any trade or commerce declared unlawful by Section 201-3 of the Consumer Protection Law. In support of this action the Commonwealth respectfully represents the following:

PARTIES

1. Plaintiff is the Commonwealth of Pennsylvania, acting by Attorney General Thomas W. Corbett, Jr., through the Bureau of Consumer Protection, Erie Regional Office, 1001 State Street, Suite 1009, Erie, Erie County, Pennsylvania, 16501.

2. Defendant, Bryant Hammond, is an adult individual who resides at 1152 East 28th Street, Erie, Pennsylvania 16504.

3. Defendant engages in trade or commerce within Pennsylvania through the operation of a home improvement contracting business that, among other services, advertises, offers for sale, sells and provides installation of windows, through the unregistered Fictitious Name of Windows Express at 1152 East 28th Street, Erie, Pennsylvania 16504.

BACKGROUND

4. 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 Section 201-3 of the Consumer Protection Law.

5. The Commonwealth believes that the public interest is served by seeking before this Court a permanent injunction to restrain the methods, acts and practices hereinafter set forth, and to require restitution for the affected consumers who paid money to Defendant for materials and labor, and did not receive the services and/or materials contracted to be provided by the Defendant.

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

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

DEFENDANT'S BUSINESS PRACTICES

8. The Defendant solicits business through home contracting and either used or uses form agreements, a copy of which is attached hereto as Exhibit "A."

9. The Defendant's contracts do not contain a Notice required by Section 201-7 of the Consumer Protection Law which provides that consumers be given a Notice informing them of a Three Day Right of Cancellation or Rights of Rescission Notice. A copy of the statutory form notice is hereby attached as Exhibit "B".

10. Contrary to the Defendant's assertions in his contracts that the company is a "corporation organized and existing under the laws of the State of Pennsylvania with its principal office located in Erie, Erie County, Pennsylvania" there is no recorded filing of such corporation with the Commonwealth of Pennsylvania.

11. Contrary to the Defendant's assertions in his contract that the windows will be delivered per a delivery schedule, the Bureau of Consumer Protection has received complaints that Defendant has accepted 50% down payments toward an order for windows but the Defendant has failed to provide any windows or installation work for said payments.

12. Defendant utilized the services of "sales reps" that had direct contact with consumers on behalf of Defendant and his company.

13. Said "sales reps" acted as agents of Defendant, and, as such, carried out the business practices of the Defendant's sales business.

14. Defendant's "sales reps" took orders and accepted checks from consumers to be applied toward the down payment required by Defendant's business practices as described in his contract.

15. The Defendant directed, supervised, controlled, approved, authorized, ratified, benefited from and, or, otherwise accepted the acts and practices of his sales reps or agents, or, in the alternative, Defendant knew or should have known of the acts and practices being used by his sales reps while those sales reps acted to promote sales on the behalf of Defendant.

16. The Commonwealth believes and therefore avers that there may be additional consumers that have not filed complaints with the Bureau of Consumer Protection and have been harmed due to the methods, acts and practices of the Defendant which includes but are not limited to those as alleged herein.

17. Among the consumers victimized by Defendant as aforesaid include citizens over the age of sixty (60) years of age.

COUNT I

FAILURE TO COMPLETE WORK AS PROMISED

18. Plaintiff incorporates Paragraphs 1-17 as though the same were more fully set forth herein.

19. The Defendant has entered into agreements with consumers at their residences for home improvement services that include the provision of windows and their installation. Sample redacted contracts are attached hereto as Exhibits "C" and "D" and "E".

20. Plaintiff believes, and therefore avers that Defendant represented that he would provide and install windows within a certain period of time.

21. Plaintiff believes, and therefore avers that Defendant did not perform the services for which he contracted with consumers and completely failed to perform any related installation work.

22. Plaintiff believes, and therefore avers that Defendant has failed to satisfactorily complete his contractual obligation.

23. The aforesaid acts and practices constitute 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) 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);
- (b) Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for purchase of goods or services in violation of 73 P.S. § 201-2 (4) (xiv); and,
- (c) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of or of misunderstanding in violation of 73 P.S. § 201-2 (4) (xxi).

24. Said conduct on the part of Defendant is illegal and in violation of Section 201-3 of the Consumer Protection Law.

PRAYER FOR RELIEF

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

- A. Permanently enjoining the Defendant, his agents, successors, assigns, and employees acting directly or through a sole proprietorship, or, any corporate device, partnership, or limited liability company from engaging in the acts and practices alleged in this complaint and any other acts and practices which violate the Consumer Protection Law;
- B. Directing the Defendant to make full restitution to all consumers who have suffered losses as a result of the acts and practices alleged in this complaint and any other acts or practices which violate the Consumer Protection Law;

- C. Directing the Defendant pursuant to Section 201-8(b) of the Consumer Protection Law, to pay civil penalties in the amount of One Thousand Dollars (\$1,000.00) for each and every violation of the Consumer Protection Law, which will increase to Three Thousand Dollars (\$3,000.00) for each violation involving a victim age sixty (60) or older;
- D. Directing the Defendant to disgorge and forfeit all profits he has derived as a result of his unfair and deceptive acts and practices as set forth in this complaint.
- E. Directing the Defendant to pay the Commonwealth for the costs of its investigation and prosecution of this action;
- F. Appointing a receiver to sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, monies and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description of the Defendant, pursuant to Section 201-9.1 of the Consumer Protection Law;
- G. Directing the Defendant to forfeit his right or franchise to engage in business within the Commonwealth of Pennsylvania until such time as all monies have been paid for restitution, costs and civil penalties;

H. Providing any other such relief as the Court may deem necessary and appropriate.

COUNT II

FAILURE TO PROVIDE PROPER NOTICE OF RIGHT TO CANCEL

25. Plaintiff incorporates paragraphs 1-24 as though the same were more fully set forth herein.

26. Contracts with the consumers were signed or orally agreed upon in the consumers' homes or were due to a call or contact at the home.

27. Defendant failed to inform consumers, at the time they signed the contract, of their right to cancel as required by Section 201-7 (d) of the Consumer Protection Law.

28. The Defendant's contract attached hereto as Exhibit "B" did not comply with that section in that he failed to attach the "notice of cancellation" as required by this section, in violation of 73 P.S. § 201-7 (b)(2).

29. The aforesaid acts and practices constitute unfair methods of competition and unfair or deceptive acts or practices prohibited by Section 201-3 of the Consumer Protection law, including without limitation:

(a) 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).

30. Said conduct on the part of Defendant is illegal and in violation of Section 201-3 of the Consumer Protection Law, supra.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth respectfully requests this Honorable Court to

enter an Order:

- A. Permanently enjoining the Defendant, his agents, successors, assigns, and employees acting directly or through a sole proprietorship, or, any corporate device, partnership, or limited liability company from engaging in the acts and practices alleged in this complaint and any other acts and practices which violate the Consumer Protection Law;
- B. Directing the Defendant to make full restitution to all consumers who have suffered losses as a result of the acts and practices alleged in this complaint and any other acts or practices which violate the Consumer Protection Law;
- C. Directing the Defendant pursuant to Section 201-8(b) of the Consumer Protection Law, to pay civil penalties in the amount of One Thousand Dollars (\$1,000.00) for each and every violation of the Consumer Protection Law, which will increase to Three Thousand Dollars (\$3,000.00) for each violation involving a victim age sixty (60) or older;
- D. Directing the Defendant to disgorge and forfeit all profits he has derived as a result of his unfair and deceptive acts and practices as set forth in this complaint.
- E. Directing the Defendant to pay the Commonwealth for the costs of its investigation and prosecution of this action;

- F. Appointing a receiver to sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, monies and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description of the Defendant, pursuant to Section 201-9.1 of the Consumer Protection Law;
- G. Directing the Defendant to forfeit his right or franchise to engage in business within the Commonwealth of Pennsylvania until such time as all monies have been paid for restitution, costs and civil penalties;
- H. Providing any other such relief as the court may deem necessary and appropriate.

COUNT III

VIOLATION OF THE FICTITIOUS NAMES ACT

31. Paragraphs 1-30 and all of their subsections are hereby incorporated by reference as though fully set forth below.

32. The Commonwealth avers that the Defendant conducts business under the fictitious name of Windows Express which has not been registered.

33. The Pennsylvania Fictitious Names Act, 54 Pa. C. S. A. § 301 et seq., mandates that any entity which conducts business in the Commonwealth under or through any fictitious name shall register the fictitious name to establish a public record of the relationship of any entity to the business being conducted by or through the fictitious name.

34. By failing to register his fictitious name as described above the Defendant has violated the act.

35. The aforesaid acts and practices constitute unfair methods of competition and/or unfair and deceptive acts or practices prohibited by Section 201-3 of the Consumer Protection Law by, among other things:

(a) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services 73 P.S. § 201-2 (4) (ii).

(b) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another; 73 P.S. § 201-2 (4) (iii)

(c) 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; 73 P.S. § 201-2 (4) (v).

(d) Representing that are of a particular standard, quality or grade, or, that goods are of a particular style or model if they are of another; 73 P.S. § 201-2 (4) (vii).

(e) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding. 73 P.S. § 201-2 (4) (xxi).

PRAYER FOR RELIEF

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

- A. Permanently enjoining the Defendant, his agents, successors, assigns, and employees acting directly or through a sole proprietorship, or, any corporate device, partnership, or limited liability company from engaging in the acts and practices alleged

in this complaint and any other acts and practices which violate the Consumer Protection Law;

- B. Directing the Defendant to make full restitution to all consumers who have suffered losses as a result of the acts and practices alleged in this complaint and any other acts or practices which violate the Consumer Protection Law;
- C. Directing the Defendant, pursuant to Section 201-8(b) of the Consumer Protection Law, to pay civil penalties in the amount of One Thousand Dollars (\$1,000.00) for each and every violation of the Consumer Protection Law, which will increase to Three Thousand Dollars (\$3,000.00) for each violation involving a victim age sixty (60) or older, and authorizing the Office of Attorney General to deposit all civil penalties paid pursuant to this Court's order into an escrow account for the purpose of distributing the same in compliance with 73 P.S. § 2245.2;
- D. Directing the Defendant to disgorge and forfeit all profits he has derived as a result of his unfair and deceptive acts and practices as set forth in this complaint.
- E. Directing the Defendant to pay the Commonwealth for the costs of its investigation and prosecution of this action;
- F. Appointing a receiver to sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, monies

and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description of the Defendant, pursuant to Section 201-9.1 of the Consumer Protection Law;

- G. Directing the Defendant to forfeit his right or franchise to engage in business within the Commonwealth of Pennsylvania until such time as all monies have been paid for restitution, costs and civil penalties;
- H. Providing any other such relief as the Court may deem necessary and appropriate.

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY: _____

Carm Presogna
Attorney ID # 26465
Senior Deputy Attorney General
Bureau of Consumer Protection
1001 State Street, Suite 1009
Erie, Pa. 16501
814-871-4371

IN THE ERIE COUNTY COURT OF COMMON PLEAS

COMMONWEALTH OF PENNSYLVANIA	:
ACTING BY ATTORNEY GENERAL	:
THOMAS W. CORBETT, JR.	:
	:
Plaintiff	:
	:
v.	:
	:
BRYANT HAMMOND, d/b/a WINDOWS	:
EXPRESS	:
	:
Defendant	: NO.

VERIFICATION

I, Emily Watson, being duly sworn according to law, hereby state that I am a Senior Agent for the Office of Attorney General, Bureau of Consumer Protection, Commonwealth of Pennsylvania and that I am authorized to make this Verification and that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, information and belief.

Emily Watson
Senior Agent