

**IN THE COURT OF COMMON PLEAS OF
NORTHAMPTON COUNTY, PENNSYLVANIA**

CIVIL ACTION

COMMONWEALTH OF PENNSYLVANIA	: NO.
BY ATTORNEY GENERAL	:
THOMAS W. CORBETT, JR.	:
	:
PLAINTIFF	:
	:
v.	:
MICHAEL CAPRISTA, Individually	:
and d/b/a All Valley Builders & Remodelers	:
and Homeowners Choice Construction, Inc.	:
	:
DEFENDANT	:

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 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 NOTICE TO YOUR LAWYER AT ONCE. IF
YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE(S) 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
NORTHAMPTON COUNTY BAR ASSOCIATION
155 S. NINTH STREET
EASTON, PENNSYLVANIA 18042
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Attorney for Plaintiff

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COMPLAINT

AND NOW, comes the Commonwealth of Pennsylvania acting by Attorney General Thomas W. Corbett, Jr., through the Bureau of Consumer Protection, and brings this action pursuant to the Unfair Trade Practices and Consumer Protection Law, Act of December 17, 1968, P.L. 1224, as amended and re-enacted by the Act of November 24, 1976, P.L. 1166, No. 260, the Act of December 3, 1996, 73 P.S. §201-1, et seq. (hereinafter referred to as the "Consumer Protection Law" or "CPL") The Consumer Protection Law authorizes the Attorney General to bring an action in the name of the Commonwealth of Pennsylvania, 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 §201-3 of the Consumer Protection Law. In support of this action the Commonwealth respectfully represents the following:

THE PARTIES

1. Plaintiff is the Commonwealth of Pennsylvania, acting by Attorney General ("Commonwealth" or "Plaintiff") Thomas W. Corbett, Jr., through the Bureau of Consumer Protection, Lehigh Valley Regional Office, 801 Hamilton Street, 4th Floor, Allentown, Lehigh County, Pennsylvania 18101.

2. Defendant, Michael Caprista ("Defendant") is a Pennsylvania resident with a last known address of 24 East Prospect Street, Nazareth, PA 18064.

3. Defendant is engaged in trade and commerce within Pennsylvania through the operation of a home improvement business that, among other things, is involved in home improvement services including, but not limited to, the installation of windows, refinishing basements and remodeling and renovating homes.

4. The Defendant has a history of consumer fraud perpetrated under a variety of registered as well as unregistered names and other devices, including but not limited to:

- a. All Valley Builders & Remodelers
- b. Homeowners Choice Construction, Inc.
- c. Sharp Image Home Remodeling Co., Inc.

5. The Defendant advertised these various businesses via pamphlets, business cards and word of mouth. Exemplary copies of these pamphlets and business cards are attached hereto as Exhibit "A."

BACKGROUND

6. 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.

7. The Commonwealth has reason to believe that the Defendant is in violation of Section 201-7 of the Consumer Protection Law.

8. 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 labor and/or materials contracted for with Defendant.

9. 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.

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

11. Defendant has a history of consumer fraud perpetrated through a variety of different names. The Commonwealth has previously received consumer complaints concerning the business practices of Sharp Image Home Remodeling Company, Inc. The Defendant was a Co-principal and a Vice President at said business since its incorporation in January 1999.

12. The Defendant also operates under the name of Homeowners Choice Construction, Inc. The Defendant filed articles of incorporation for said company on

December 20, 2004. The Defendant also began contracting under this name and, evidenced by consumer complaints, he repeated the same fraudulent and deceptive acts.

13. Defendant Homeowners Choice Construction, Inc. is controlled by Michael Caprista, who with actual and/or constructive knowledge approved, endorsed, authorized, formulated, directed, supervised, controlled, ratified, benefited from and/or otherwise participated in its acts and practices.

14. Furthermore, the Commonwealth has received over thirty three (33) complaints regarding the fraudulent business practices of the Defendant under the name “All Valley Builders and Remodelers.”

15. The Defendant filed a Chapter 7 Bankruptcy on January 20, 2005. Judge Thomas M. Twardowski entered an Order on October 25, 2005 and dismissed the case pursuant to 11 U.S.C. 707(a). A copy of the Order is attached hereto as Exhibit “B.”

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.

COUNT I

FAILURE TO COMPLETE WORK AS PROMISED

17. Plaintiff incorporates Paragraph 1-16 as though the same were more fully set forth herein.

18. The Defendant, Michael Caprista, has entered into agreements with consumers at their residences and elsewhere for a variety of work and home improvement services including, but not limited to installing windows, refinishing basements, as well

as the remodeling and renovating of homes. Redacted exemplary copies of his agreement are attached hereto as Exhibit “C.”

19. The Defendant has several variations of form contracts that are used for business purposes. The distinctions between the contracts, in addition to varying in appearance, lies in the inconsistency between the amounts set for an initial deposit. For instance, some contracts call for a one-third (1/3) initial deposit while others demand a fifty percent (50%) deposit. In other instances, and with no justification, the Defendant makes no mention of an initial deposit.

20. Furthermore, some of the Defendant’s contracts require a payment at each stage of the alleged completed work. The Defendant classifies this portion of the contract as the “payment schedule.” For example, one contract version, in addition to an initial one-third (1/3) deposit, requires another one-third (1/3) deposit at the completion of the plumbing or electrical work. A second contract version demands an additional twenty-five percent (25%) deposit at the arrival of “windows” or the start of the installation of the said windows.

21. Most of the Defendants’ contracts contain a five (5) year labor warranty on all work performed by the Defendant.

22. Moreover, the Defendant’s pamphlets provide:

“All Valley Builders & Remodelers our attention to detail, concern for quality and most importantly our long list of very satisfied customers are the driving force behind our companies success.”

A copy of the pamphlet is attached hereto as part of Exhibit “D.”

23. Contrary to these representations, it is evident that the experience the consumers share with the Defendant has left them very unsatisfied.

24. Furthermore, the Defendant rarely completed the contracted work. Usually the Defendant vanishes from the consumers' residence after a partial beginning of the work.

25. The consumer often has a difficult time contacting the Defendant and more often than not, the consumer is never able to reach the Defendant. Therefore, the five (5) year labor guarantee on all work performed by the Defendant is difficult, if not impossible, to enforce.

26. Plaintiff is advised, believes, and therefore avers that Defendant Michael Caprista has failed to satisfactorily complete his contractual obligations.

27. Plaintiff is advised, believes, and therefore avers that Defendant Michael Caprista, represented that he could provide skilled and competent home improvement contracting and other work.

28. Plaintiff is advised, believes, and therefore avers that Defendant Michael Caprista, did not fully perform the services contracted for with consumers or performed the services in an unsatisfactory manner.

29. Plaintiff is advised, believes, and therefore avers that Defendant Michael Caprista, despite being contacted by consumers requesting that the jobs contracted for be satisfactorily completed or their money returned, has ignored the consumers' requests.

30. Plaintiff is advised, believes, and therefore avers that Defendant Michael Caprista has failed to begin work or complete work as agreed to in a timely manner on

contracts entered into with consumers after taking substantial payments from the consumers.

31. Plaintiff is advised, believes, and therefore avers that Defendant Michael Caprista has offered a host of unfounded excuses as to why the work was not properly and timely completed.

32. 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 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)(iii);
- (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 violation of 73 P.S. 201-2(4)(viii);
- (d) Advertising goods or services with intent not to sell them as advertised in violation of 73 P.S. 201-2(4)(ix);
- (e) 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. 201-1(4)(xiv);
- (f) 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. 201-1(4)(xvi); and

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

33. Said conduct on the part of Defendant Michael Caprista 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 any corporate device 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 Unfair Trade Practices and 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 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, chooses 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 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;
- 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

34. Plaintiff incorporates paragraphs 1-33 as though the same were more fully set forth herein.

35. The 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.

36. Defendant failed to orally inform consumers at the time they signed the contract of their right to cancel as required by § 201-7(d).

37. Defendant does not provide consumers with a completed "Notice of Cancellation" form in duplicate as required by § 201-7(b)(2).

38. Not all of the Defendant's form contracts provide consumers with the language required by § 201-7(b)(2) regarding the right to cancel.

39. 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 by, among other things:

- (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); and
- (d) Engaging in other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding in violation of 73 P.S. 201-2(4)(xxi).

40. Said conduct on the part of Defendant Michael Caprista, 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 any corporate device from engaging in the acts and practices alleged in this Complaint and any other acts and

practices which violate the Consumer Protection Law including without limitation Section 201-7;

- 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 Unfair Trade Practices and 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 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 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;

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

COUNT III

FAILURE TO ISSUE PROMISED REFUNDS

41. The Commonwealth incorporates paragraphs 1 through 40 as though the same were set forth herein at length.

42. After paying money for services promised but not provided by the Defendant, consumers then demanded refunds. Defendant, in turn, failed to provide these refunds, as promised.

43. 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 by, among other things:

- (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); and
- (d) Engaging in other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding in violation of 73 P.S. 201-2(4)(xxi).

44. Said conduct on the part of Defendant Michael Caprista 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 any corporate device 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 Unfair Trade Practices and 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 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, chooses 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 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;
- H. Providing any other such relief as the Court may deem necessary and appropriate.

COUNT IV

VIOLATIONS OF THE FICTITIOUS NAMES ACT

- 45. The Commonwealth incorporates paragraphs 1 through 44 as though the same were set forth herein at length.
- 46. Defendant All Valley Builders & Remodelers is not a registered fictitious name.
- 47. The Fictitious Names Act, 54 Pa. C.S.A. § 301 et seq., states that “any entity which either alone or in combination with any other entity conducts any business in the Commonwealth of Pennsylvania under or through any fictitious name shall register the fictitious name with the Pennsylvania Department of State.”
- 48. Defendant in doing business as All Valley Builders & Remodelers has violated the Fictitious Names Act.

49. By failing to comply with the Fictitious Names Act, Defendant has engaged in the following unfair or deceptive acts or practices as defined by the following subsections of § 201-2(4) of the Consumer Protection Law by, among other things:

- a. Causing likelihood of confusion or of misunderstanding as to the affiliation, connection or association with, or certification by, another in violation of 73 P.S. 201-2(4)(iii);
- 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) and;
- c. Engaging in other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding in violation of 73 P.S. 201-2(4)(xxi).

50. Said conduct on the part of Defendant Michael Caprista 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 any corporate device from engaging in the acts and practices alleged in this Complaint and any other acts and practices which violate the Fictitious Names Act;
- 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 Unfair Trade Practices and 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 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 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;

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

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA

THOMAS W. CORBETT, JR.
Attorney General

FRANK T. DONAGHUE
Chief Deputy Attorney General
Director, Bureau of Consumer Protection

By:

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Date: _____

By:

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DEFENDANT	:

VERIFICATION

I, Scott Perry, being duly sworn according to law, hereby state that I am an 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.

Scott Perry
Agent Supervisor