

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

PLAINTIFF,

v.

HARRY W. NASH, INDIVIDUALLY AND D/B/A
NASH CONSTRUCTION AND NASH
BUILDING & REMODELING,

DEFENDANT

IN THE COURT OF COMMON PLEAS OF
BLAIR COUNTY

CIVIL ACTION - EQUITY

NO. 2008 GN

COMPLAINT

COUNSEL FOR PLAINTIFF

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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 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.

Mid Penn Legal Services
Penn Central Place, 1107 12th Street
Ste. 1 Mezzanine
Altoona, PA 16601
(814) 943-8139
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DATE: _____

Margie A. Anderson
Deputy Attorney General

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COMPLAINT

AND NOW, comes the Commonwealth of Pennsylvania, by Attorney General Thomas W. Corbett, Jr., through the Bureau of Consumer Protection, which brings this action pursuant to the *Unfair Trade Practices and Consumer Protection Law*, 73 P.S. § 201-1, *et seq.*, (hereinafter the "Consumer Protection Law"). The Consumer Protection Law authorizes the Attorney General to bring an action in the name of the Commonwealth of Pennsylvania to restrain by temporary and/or permanent 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:

JURISDICTION AND VENUE

1. This Court has jurisdiction in this matter pursuant to 42 Pa.C.S. § 931(a).
2. Venue in this judicial district is proper under 42 Pa.C.S. § 931(c) and Pa.R.C.P. No. 1006.

THE PARTIES

3. Plaintiff is the Commonwealth of Pennsylvania, acting by Attorney General Thomas W. Corbett, Jr., through the Bureau of Consumer Protection, Ebensburg Regional Office, 171 Lovell Avenue, Suite 202, Ebensburg, Pennsylvania (hereinafter referred to as the "Commonwealth").
4. Defendant Harry W. Nash is an adult individual and a resident of Pennsylvania, who engages in trade and commerce within the Commonwealth of Pennsylvania, individually and doing business as Nash Construction and Nash Building & Remodeling from his residence and principal place of business located at 1009 Sixth Avenue, Altoona, Blair County, Pennsylvania (hereinafter referred to as the "Defendant").

BACKGROUND

5. The Defendant engages in trade and commerce within the Commonwealth of Pennsylvania through the advertising, offering for sale, sale and provision of home improvement contracting services to Pennsylvania residents in counties including, but not limited to, Blair and Cambria.
6. The Commonwealth has reason to believe that the Defendant is using, has used or is about to use methods, acts or practices declared unlawful by § 201-3 of the Consumer Protection Law.
7. The Commonwealth believes that the public interest is served by seeking this Court to enter a permanent injunction to restrain the methods, acts and practices of the Defendant as herein set forth. Further, the Commonwealth requests restitution, civil penalties and other appropriate equitable relief as redress for violations of the Consumer Protection Law.
8. At all times relevant and material hereto the unlawful methods, acts and practices complained of herein have been willfully used by the Defendant.
9. The Defendant enters into contracts for residential home improvement services

with consumers as a result of, or in connection with, a contact with or call upon the consumers at the consumers' residences (hereinafter referred to as "home improvement contracts").

10. The Defendant's advertisement in the November 21, 2005, edition of the *Altoona Mirror* represented the following: "Experienced in all phases of building, remodeling & repairs. Fully insured, Quality Workmanship. Free Estimates. 'Serving the Area for over 25 Years'."
11. The Defendant also advertises his services by distributing a flyer to consumers, which includes the representation "The One To Trust In All Your Refurbishing Or Building Needs". A copy of this flyer is attached hereto and labeled as Exhibit "A".
12. The Defendant enters into home improvement contracts with consumers, which are signed in the consumers' homes.
13. The Defendant accepts payments for residential home improvement services in connection with said home improvement contracts.
14. Beginning as early as 2004 the Commonwealth began receiving complaints from consumers regarding the Defendant's business practices, which included, but were not limited to, allegations that the Defendant accepted payment for home improvement services which he either failed to perform, failed to complete or failed to perform in a good and workmanlike manner.
15. An example of such a complaint was received by the Commonwealth on January 10, 2006, from a consumer who complained that the Defendant accepted payment but failed to complete the work as agreed and failed to perform the work that was completed in a good and workmanlike manner.
16. The contract that the Defendant entered into with this consumer provides that "All workmanship is 100% guaranteed".
17. In addition, this contract did not include the three day notice of cancellation required by Section 7 of the Consumer Protection Law, 73 P.S. § 201-7 (hereinafter referred to as "Section 7 Notice of Cancellation"). A redacted copy of

this contract is attached hereto and labeled Exhibit "B".

18. On March 24, 2006, the Commonwealth sent a certified letter to the Defendant putting him on notice that his business practices are in violation of the Consumer Protection Law because he failed to complete the work on the consumer's house as agreed, failed to complete the work in a good and workmanlike manner, and failed to include the proper three day cancellation provision provided by Section 7 of the Consumer Protection Law. A redacted copy of this letter is attached hereto and labeled as Exhibit "C".
19. The Defendant received the certified letter from the Commonwealth on March 28, 2006, as confirmed by his signature on the card received by the Commonwealth. A copy of the receipt and signature card are attached hereto and labeled as Exhibit "D".
20. On or about August 25, 2006, the Commonwealth received a complaint from another consumer who complained that the Defendant accepted her payment but failed to complete the work as agreed and failed to complete the work that was performed in a good and workmanlike manner.
21. The contract that the Defendant entered into with this consumer on August 25, 2006, was for the total price of \$5,000.00 and was entered into as the result of a contact made at her home.
22. Despite receiving the letter of March 24, 2006, and a copy of the Consumer Protection Law, the Commonwealth is informed, believes and, therefore, avers that the Defendant still failed to inform consumers of their cancellation rights as provided by Section 7 of the Consumer Protection Law.
23. The Commonwealth is informed, believes and, therefore, avers that the Defendant made false and misleading representations to consumers including, but not limited to, the following:
 - a. He represented to at least one (1) consumer that he would provide a copy of his one million dollar liability policy upon execution of the

contract, which the Defendant did not provide;

b. He represented to at least one (1) consumer that the home improvement work would be completed within two (2) to three (3) weeks, which the Defendant failed to complete within that period of time; and,

c. He represented to at least two (2) consumers that his house was robbed and the consumers would need to pay additional money in order for him to either begin or complete the work on their homes.

24. The Commonwealth is informed, believes and, therefore, avers that the Defendant did not file a police report relating to the burglary at his house which he claims was the reason why he was unable to complete the home improvement work for at least two (2) consumers.

25. On October 27, 2006, the Commonwealth initiated an investigation into the business practices of the Defendant.

26. On December 21, 2006, the Defendant transferred his house located at 1009 Sixth Avenue, Altoona, Pennsylvania, to his daughter Amanda Jean Nash for One and 00/100 Dollar (\$1.00).

27. The Commonwealth is informed, believes and, therefore, avers that this house was the Defendant's only asset.

28. Pennsylvania consumers, including consumers in Blair and Cambria counties, have suffered losses as a result of the Defendant's unfair and deceptive acts and practices.

**COUNT I—VIOLATIONS OF THE CONSUMER PROTECTION LAW
MISREPRESENTATIONS & FAILURE TO COMPLETE WORK AS CONTRACTED**

29. Paragraphs 1 through 28 of the foregoing complaint are incorporated herein by reference.

30. The Defendant entered into home improvement contracts with consumers, accepted payment for home improvement services to be performed and then failed

to fully complete the home improvement services provided for in said home improvement contracts and, as a result, consumers have suffered losses equal to the amount they have paid for home improvement services which were not performed or were not fully completed.

31. The Defendant contracted to perform home improvement services for residential consumers which were not completed in a good and workmanlike manner and, as a result, consumers have suffered losses in connection with the completion or repair of the project that was the subject of their home improvement contract.
32. The Defendant advertises "Experienced in all phases of building, remodeling & repairs" yet he failed to correctly bid consumers' home improvement work and was unable to complete the work as provided for in his contract.
33. The Defendant advertises "Quality Workmanship" which he fails to provide to consumers.
34. The Defendant advertises "The One To Trust In All Your Refurbishing Or Building Needs" and then he fails to complete the consumers' home improvement services as promised.
35. The Defendant represents to consumers that the home improvement work will be completed in a certain timeframe and then he fails to complete the work by the time specified.
36. The Defendant falsely or deceptively represented to some consumers that "all workmanship is 100% guaranteed".
37. The Defendant represented to at least one (1) consumer that he would receive a copy of the Defendant's general liability policy, which the Defendant never provided to this consumer.
38. The Defendant represented to consumers that he did not have the funds to complete their work; however, he transferred his house, which was his only asset, to his daughter.
39. The Defendant falsely or deceptively represented to some consumers that the

reason he was unable to perform the work on their house was due to his house being burglarized.

40. The acts, practices and methods of competition set forth above are unlawful and in violation 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 or commerce as defined by Sections 201-2(4)(v), (vii), (ix), (xiv), (xvi), and (xxi) of the Consumer Protection Law:

(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) Failure 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)(v), (vii), (ix), (xiv), (xvi) and (xxi).

41. The Defendant has caused and continues to cause harm by violating the Consumer Protection Law and, therefore, the Commonwealth requests the relief set forth in the Prayer for Relief below.

PRAYER FOR RELIEF

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

- A. Permanently enjoining the Defendant from engaging in the aforementioned acts, practices, methods of competition or any other practice violative of the Consumer Protection Law or other state law;
- B. Directing the Defendant to permanently forfeit his right to engage in trade and commerce within the Commonwealth of Pennsylvania by entering into any home improvement contracts either individually, through any person acting on his behalf, as a partner, or through any corporate or business device;
- C. Directing the Defendant to make full restitution to all consumers who suffered losses as the result of the Defendant's business practices as alleged in this Complaint;
- D. Directing the Defendant 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, which will increase to Three Thousand and 00/100 Dollars (\$3,000.00) for each violation involving a victim age (sixty) 60 or older;
- E. Directing the Defendant to pay the Commonwealth for the costs of its investigation and prosecution of this action; and,
- F. Providing such other equitable relief as the Court may deem appropriate and necessary.

**COUNT II—VIOLATIONS OF THE CONSUMER PROTECTION LAW
DEFENDANT'S USE OF ILLEGAL CONTRACTS**

42. Paragraphs 1 through 41 of the foregoing complaint are incorporated herein by reference.
43. Defendant has used contracts which violate the provisions of §§ 201-7(b)(1) and (2) of the Consumer Protection Law and the Federal Trade Commission Rule concerning a Cooling-Off-Period for Door-To-Door Sales, 16 C.F.R. § 429, *et seq.*, by failing to include the required notice of cancellation in the contract itself and by not using the notice of cancellation form required to be attached to such contracts.
44. The Defendant has used contracting practices which violate the provisions of § 201-7(d) of the Consumer Protection Law by having failed to orally inform consumers at the time they sign contracts of their right to cancel.
45. The acts, practices and methods of competition set forth above are unlawful and in violation 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 or commerce as defined in § 201-2(4)(xxi) of the Consumer Protection Law.
46. Defendant has caused and continues to cause harm by violating the Consumer Protection Law and, therefore, the Commonwealth requests the relief set forth in the Prayer for Relief below.

PRAYER FOR RELIEF

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

- A. Permanently enjoining the Defendant from engaging in the aforementioned acts, practices, methods of competition or any other practice violative of the Consumer Protection Law or other state law;
- B. Directing the Defendant to permanently forfeit his right to engage in trade and commerce within the Commonwealth of Pennsylvania by entering into

any home improvement contracts either individually, through any person acting on his behalf, as a partner, or through any corporate or business device;

- C. Directing the Defendant to make full restitution to all consumers who suffered losses as the result of the Defendant's business practices as alleged in this Complaint;
- D. Directing the Defendant 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, which will increase to Three Thousand and 00/100 Dollars (\$3,000.00) for each violation involving a victim age (sixty) 60 or older;
- E. Directing the Defendant to pay the Commonwealth for the costs of its investigation and prosecution of this action; and,
- F. Providing such other equitable relief as the Court may deem appropriate and necessary.

RESPECTFULLY SUBMITTED,

THOMAS W. CORBETT, JR.
ATTORNEY GENERAL

DATE: _____

By: _____

MARGIE A. ANDERSON
DEPUTY ATTORNEY GENERAL
SUPREME COURT I.D. NO. 79513

JESSE F. HARVEY
SENIOR DEPUTY ATTORNEY GENERAL
SUPREME COURT I.D. NO. 63435

VERIFICATION

Thomas W. Creehan, states that he is in excess of eighteen (18) years of age and is an Agent for the Commonwealth of Pennsylvania, Office of Attorney General, Bureau of Consumer Protection, the Plaintiff in this action. He verifies that the statements made in the foregoing Complaint are true and correct to the best of his knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Dated: _____

Thomas W. Creehan
Agent Supervisor