

IN THE COURT OF COMMON PLEAS OF  
SCHUYLKILL COUNTY, PENNSYLVANIA

CIVIL ACTION

COMMONWEALTH OF PENNSYLVANIA	:	FILE NO.
Acting by ATTORNEY GENERAL	:	
THOMAS W. CORBETT, JR.	:	
	:	
PLAINTIFF	:	
v.	:	
	:	
JOHN W. CONRAD and d/b/a J.C. CONCRETE	:	
SERVICE	:	
418 West Savory Street	:	
Pottsville, Pennsylvania 17901	:	
	:	
DEFENDANT	:	

KATHRYN H. SILCOX  
DEPUTY ATTORNEY GENERAL  
ATTORNEY ID NO. 81735  
OFFICE OF ATTORNEY GENERAL  
BUREAU OF CONSUMER PROTECTION  
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NOTICE TO DEFEND

Pursuant to PA RCP No. 1018.1

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 HAS 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.

Pennsylvania Bar Association Lawyer Referral Service  
100 South Street,  
P. O. Box 186,  
Harrisburg, PA 17108,  
(800) 692-7375

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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. Defendant, John W. Conrad, Individually and d/b/a J.C. Concrete Service, hereinafter “Defendant” maintains a principal place of business located at 418 West Savory Street, Pottsville. Schuylkill County, Pennsylvania, 17901.
5. Defendant, directly or through his agent, is engaged in trade and commerce throughout the Commonwealth by providing concrete services, including but not limited to textured and stamped concrete.

## BACKGROUND

6. The Commonwealth has reason to believe that the Defendant has 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 has sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not has or that a person has a sponsorship, approval, status, affiliation, or connection that he does not has;
- (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 Defendant 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 has been willfully used by Defendant.

11. The Commonwealth is informed, believes and therefore avers that Defendant 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 Defendant has entered into contracts with consumers at their residences for construction services, including but not limited to the repair and/or replacement of concrete surfaces, such as driveways and patios.
14. Plaintiff is advised, believes and therefore avers that Defendant represented to the consumers that he could provide skilled and competent concrete services.
15. Plaintiff is advised, believes and therefore avers that Defendant 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 Defendant has failed to satisfactorily complete his contractual obligations.
17. Plaintiff is advised, believes, and therefore avers that Defendant, despite being contacted by consumers requesting that the jobs contracted for be satisfactorily completed or his money returned, has ignored the consumers' requests or failed to satisfactorily address the complaints.
18. Plaintiff is advised, believes, and therefore avers that Defendant has 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 Defendant's acts and practices due to the fact that they paid the Defendant for work to be completed on their homes which he failed to provide or provided in a shoddy manner. The impact of the Defendant' practices are illustrated in the following examples:

- (a) Consumers Sara and Ronald Davis paid a deposit of One Thousand Five Hundred Dollars (\$1,500.00) to Defendant to construct a cement walkway at the side of their home and construct a cement patio. Despite the Defendant's promises, he has failed to either start the job or to refund the money.
- (b) Consumer Mary Lou and Martin Heaney paid Defendant a deposit of Four Thousand Three Hundred Twenty Seven Dollars and Twenty Five Cents (\$4,327.25) to construct concrete walkways and a driveway. Although the deposit was paid in April 2005, the Defendant has still failed to begin the work despite the Consumers repeated attempts to contact the Defendant.
- (c) Consumer Anthony Perilli paid Defendant One Thousand Dollars (\$1,000.00) for a concrete patio, one step and a grill pad. The Defendant cashed the deposit check submitted by Consumer Perilli and yet despite numerous telephone calls to the Defendant, he has failed to initiate any work.
- (d) Consumer Bev Moody paid Defendant Five Thousand Six Hundred Dollars (\$5,600.00) to rebuild her patio with stamped concrete. Defendant started work on June 22, 2005, yet failed to return and complete the job. In addition, the Defendant failed to rebuild the consumer's stairs to access the patio and did not remove gravel and a dumpster from the premises.

(e) Consumer Joanne Weber paid Defendant Two Thousand Two Hundred Dollars (\$2,200.00) as a down payment on September 7, 2005. Defendant failed to initiate any work and has not returned the money to the consumer.

20. By conducting the aforesaid acts and practices, the Defendant has 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 has sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not has or that person has a sponsorship, approval, status, affiliation, or connection that he does not has 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 Defendant, his 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 Defendant to pay restitution to consumers who have filed or come forward to file verified consumer complaints against the Defendant with the Pennsylvania Office of Attorney General regarding the business practices complained of herein;
- C. Directing the Defendant to disgorge and forfeit all profits they has derived as a result of his unfair and deceptive practices set forth 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 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 Defendant to pay the Commonwealth for the costs of its investigation and prosecution of this action;
- F. 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 has 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 Defendant executed contracts with consumers in the consumers' homes or was due to a call or contact at the home.
25. Defendant sells or contracts to sell home improvement services to consumers having a sales price in excess of twenty-five dollars (\$25.00).
26. Defendant's 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.

#### PRAYER FOR RELIEF

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

- A. Permanently enjoining Defendant, his 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 Defendant to pay restitution to consumers who has filed or come forward to file verified consumer complaints against the Defendant with the Pennsylvania Office of Attorney General regarding the business practices complained of herein;
- C. Directing the Defendant to disgorge and forfeit all profits they has derived as a result of his unfair and deceptive practices set forth 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 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 Defendant to pay the Commonwealth for the costs of its investigation and prosecution of this action;
- F. 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 has been paid for restitution, costs and civil penalties; and,
- G. Providing any other such relief as the Court may deem necessary and appropriate.

COUNT III  
**VIOLATIONS OF THE FICTITIOUS NAMES ACT**

- 29. The Commonwealth incorporates paragraphs 1 through 28 as though the same were set forth herein at length.
- 30. Plaintiff is advised, believes, and therefore avers that J.C. Concrete Service is not a registered fictitious name.

31. 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.”
32. Defendant, in doing business as J.C. Concrete Service, has violated the Fictitious Names Act.
33. 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 has sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not has or that person has a sponsorship, approval, status, affiliation, or connection that he does not has 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).
34. 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.
35. 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 Defendant, his 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 which violates the Fictitious Names Act;
- B. Directing the Defendant to pay restitution to consumers who has filed or come forward to file verified consumer complaints against the Defendant with the Pennsylvania Office of Attorney General regarding the business practices complained of herein;
- C. Directing the Defendant to disgorge and forfeit all profits they has derived as a result of his unfair and deceptive practices set forth 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 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 Defendant to pay the Commonwealth for the costs of its investigation and prosecution of this action;
- F. 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 has been paid for restitution, costs and civil penalties; and,
- 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  
DEPUTY ATTORNEY GENERAL

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