

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
BY THOMAS W. CORBETT, JR. : OF CUMBERLAND COUNTY,
ATTORNEY GENERAL, : PENNSYLVANIA

Plaintiff,

v.

CIVIL ACTION

JAMES RYAN WARD d/b/a
WINDY RIDGE CONSTRUCTION
590 BALTIMORE PIKE
Mount Holly Springs, Pennsylvania 17065

NOTICE TO DEFEND

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 an 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.

**PENNSYLVANIA BAR ASSOCIATION
LAWYER REFERRAL SERVICE
100 SOUTH STREET, P.O. BOX 186
HARRISBURG, PA 17108
800-692-7375**

**CUMBERLAND COUNTY LAWYER REFERRAL SERVICE
2 LIBERTY AVENUE
CARLISLE, PA 17013
717-249-3166**

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COMPLAINT AND PETITION FOR PERMANENT INJUNCTION

AND NOW, this _____ day of _____, 2008, comes the

Commonwealth of Pennsylvania by Attorney General Thomas W. Corbett, Jr., through the Bureau of Consumer Protection, who brings this action on behalf of the Commonwealth pursuant to Section 201-4 of the *Unfair Trade Practices and Consumer Protection Law*, 73 P.S. §§ 201-1 – 201-9.2, (hereinafter the “Consumer Protection Law”), which Act authorizes the Attorney General to bring an action in the name of the Commonwealth of Pennsylvania, and to restrain by permanent injunction unfair methods of competition or unfair or deceptive acts or practices in the conduct of any trade or commerce declared unlawful by the Consumer Protection Law. The Commonwealth also seeks, pursuant to § 201-4.1 of the Consumer Protection Law, restitution of monies acquired from consumers by means of violations of said Law.

Additionally, the Commonwealth seeks appropriate civil penalties pursuant to § 201-8(b) of the Consumer Protection Law for all willful violations of the Consumer Protection Law. The Commonwealth seeks to recover its costs for enforcement of the Consumer Protection Law to be used for future public protection and education purposes. In support thereof, the Commonwealth respectfully represents the following:

IDENTIFICATION OF PARTIES AND LEGAL BASIS

1. The Plaintiff is the Commonwealth of Pennsylvania, acting by Attorney General Thomas W. Corbett, Jr., through the Bureau of Consumer Protection (hereinafter "Commonwealth" or "Plaintiff"), with offices located at 301 Chestnut Street, Suite 105, Harrisburg, Pennsylvania 17101.

2. Defendant James Ryan Ward, is an adult individual who is engaged in trade and commerce within the Commonwealth of Pennsylvania as the owner and operator of a home improvements and repair business.

3. Defendant Ward is conducting business under the fictitious name of Windy Ridge Construction from a principal place of business located at 590 Baltimore Pike, Mount Holly Springs, Pennsylvania 17065; and

4. Defendant has not registered his fictitious name with the Pennsylvania Department of State Corporation Bureau as required by the Fictitious Names Act, 54 Pa. C.S.A. §§ 301- 332.

5. The Commonwealth has reason to believe that the Defendant has used practices declared unlawful by § 201-3 of the Consumer Protection Law.

6. The Commonwealth believes the public interest is served by seeking before this Honorable Court a permanent injunction to restrain the operations, methods, acts, and practices of Defendant as hereinafter set forth, as well as seeking restitution for consumers and civil penalties for violations of the law.

COUNT I

DEFENDANTS MADE IMPROVEMENTS OR REPLACEMENTS TO REAL PROPERTY
OF A NATURE OR QUALITY INFERIOR TO OR BELOW THE STANDARD OF THAT
AGREED UPON IN WRITING

7. Paragraphs 1 through 6 are incorporated herein and made part hereof as if fully set forth herein.

8. Beginning in at least 2005 and continuing through the present, Defendant has engaged in a pattern or practice of the following unlawful conduct: accepting down payments on the total contract price, or payment-in-full in advance, for Defendant's home improvement and repair services but failing to commence the services or deliver the goods contracted for; failing to complete or provide the services and materials contracted for; and/or when the services were provided, completing the repairs and improvements in an unsatisfactory, shoddy manner, which included damaging other existing property.

9. The Defendant required either a down payment or payment-in-full upon contracting with consumers for their home improvement services.

10. The Defendant told consumers that the home improvement services would be initiated and completed weeks and even months before they actually were started or finished.

11. Despite the Defendant's oral representations, the Defendant's contract specifically "**Article 2. Time of Completion,**" provided that:

"The work to be performed under this Contract shall be commenced on or before [insert date] and shall be substantially completed on or before [insert date]. Time is of the essence. The following constitutes substantial completion of work pursuant to this proposal and contract: (Specify)."

12. The Defendant was either significantly late in providing or completely failed to provide the contracted home improvements services.

13. Despite the fact that Defendant failed to either perform or complete the work

contracted for with consumers, the Defendant did not provide refunds.

14. The Defendant's contract specifically identified a written standard of performance.

15. The "General Provisions" of Defendant's contract, provided that "All work shall be completed in a workman-like manner and in compliance with building codes and other applicable laws."

16. Consumers allege that Defendant's home improvement services were either not performed; incomplete; unnecessary; not in accordance with the consumer's understanding of the contract; shoddy or inferior workmanship and/or resulted in additional damages to the consumer's property, including some which required additional expenditures in the form of hiring another contractor and/or additional materials to either complete or repair the project.

17. Defendant's conduct violates § 201-3 of the Consumer Protection Act, as defined specifically in 73 P.S. § 201-2(4)(v),(vii), (xvi), and (xxi):

(v) Representing the 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 that creates

likelihood of confusion or of misunderstanding.

73 P.S. § 201-2(v), (vii), (xvi) and (xxi).

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth prays this court to grant relief as follows:

- A. Directing Defendant to make consumer restitution through the Bureau of Consumer Protection to be distributed to those consumers entitled thereto;
- B. Directing Defendant to forfeit and pay to the Commonwealth separate civil penalties of One Thousand Dollars (\$ 1,000.00) for each instance of a willful violation of the Consumer Protection Law, and Three Thousand Dollars (\$ 3,000.00) for each instance of a willful past or present violation of the Consumer Protection Law involving consumers aged sixty (60) or older as victims;
- C. Enjoining Defendant from any further violations of the Consumer Protection Law and further enjoining Defendant from doing business as an owner and operator of Windy Ridge Construction, or in any similar capacity in any other entity performing home improvement and repair services, in the Commonwealth of Pennsylvania until such time as he can demonstrate to this Honorable Court that he has paid the restitution and penalties requested in this Prayer for Relief;
- D. If necessary, appointing a Receiver under Pa. R.C.P. 1533 to determine and collect Defendant's assets and liquidate same to satisfy this Order;
- E. Granting the Commonwealth the costs of enforcing the Consumer Protection Law and the costs of filing this action; and
- F. Granting such further relief as this court may deem appropriate.

COUNT II

DEFENDANT FAILED TO PROVIDE NOTICE OF RIGHTS OF CANCELLATION

18. Paragraphs 1 through 17 are incorporated herein and made part hereof as if fully set forth herein.

19. Defendant failed to properly notify consumers that they had the right to cancel their contracts, to include informing them of the proper procedure to do so.

20. Between at least 2005 through the present, Defendant entered into contracts with consumers as a result of or in connection with a contact by Defendant on consumers at their homes.

21. Defendant failed to include a statement of the consumers' right to cancel the contract and a Notice of Cancellation as required by § 201-7 of the Consumer Protection Law.

22. All consumers mentioned in this count contracted for services in an amount greater than twenty-five (\$25.00) dollars.

23. Defendant's conduct violates § 201-3 of the Consumer Protection Law as defined by § 201-7.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth prays this court to grant relief as follows:

A. Directing Defendant to make consumer restitution through the Bureau of Consumer Protection to be distributed to those consumers entitled thereto;

B. Directing Defendant to forfeit and pay to the Commonwealth separate civil penalties of One Thousand Dollars (\$ 1,000.00) for each instance of a willful violation of the Consumer Protection Law, and Three Thousand Dollars (\$ 3,000.00) for each instance of a willful past or present violation of the Consumer Protection Law involving consumers aged sixty

(60) or older as victims;

C. Enjoining Defendant from any further violations of the Consumer Protection Law and further enjoining Defendant from doing business as an owner and operator of Windy Ridge Construction, or in any similar capacity in any other entity performing home improvement and repair services, in the Commonwealth of Pennsylvania until such time as he can demonstrate to this Honorable Court that he has paid the restitution and penalties requested in this Prayer for Relief;

D. If necessary, appointing a Receiver under Pa. R.C.P. 1533 to determine and collect Defendant's assets and liquidate same to satisfy this Order;

E. Granting the Commonwealth the costs of enforcing the Consumer Protection Law and the costs of filing this action; and

F. Granting such further relief as this court may deem appropriate.

Respectfully submitted,

THOMAS W. CORBETT, JR.
Attorney General

By:

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VERIFICATION

I, HARRY A. DORN III, Consumer Protection Agent for the Commonwealth of Pennsylvania, Plaintiff, verify that the facts set forth in the foregoing are true and correct to the best of my information, knowledge and belief.

I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsifications to authorities.

Date: _____

HARRY A. DORN III
Consumer Protection Agent

