

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	CIVIL DIVISION
OFFICE OF ATTORNEY GENERAL,	:	
BY ATTORNEY GENERAL JOSH SHAPIRO,	:	
	:	No.
Petitioner,	:	
	:	EQUITY
v.	:	
	:	
BRIAN PLOWCHA d/b/a Ticket Victory	:	
	:	
Respondent.	:	

ASSURANCE OF VOLUNTARY COMPLIANCE

AND NOW, comes the Commonwealth of Pennsylvania, Office of Attorney General, by Attorney General Josh Shapiro (hereinafter "Commonwealth"), which has caused an investigation to be made into the business practices of Brian Plowcha, individually and d/b/a "Ticket Victory" (hereinafter "Respondent") and states the following:

WHEREAS, Petitioner has offices located at Office of Attorney General, 1251 Waterfront Place, Mezzanine Level, Pittsburgh PA 15222 and 15th Floor, Strawberry Square, Harrisburg, Pennsylvania 17120;

WHEREAS, Brian Plowcha is an adult individual whose address is 290 E Elm Street, Homer City PA 15748;

WHEREAS, Brian Plowcha operated an online business in Pennsylvania from at least 2015 through 2018 pursuant to which he sold tickets for seats at professional sporting events such as football or hockey games, concerts, and other similar events, to consumers online; and

WHEREAS, for approximately a year before ceasing the “Ticket Victory” business, Respondent did not always deliver any tickets, or valid tickets, to consumers who paid for such tickets, resulting in numerous complaints and an investigation by the Bureau.

BACKGROUND

WHEREAS, Respondent engaged in trade and commerce in the Commonwealth of Pennsylvania by advertising, marketing, offering, and selling tickets via use of an internet website to football or hockey games, concerts, and other similar events;

WHEREAS, Respondent operated such business remotely in the name of “Ticket Victory,” and sold tickets to sporting and other events to consumers who responded to his online advertisements;

WHEREAS, Respondent utilized the name “Ticket Victory” in his business but did not register it as a fictitious name with the Pennsylvania Department of State, Bureau of Corporations and Charitable Organizations as required by Section 303(b) of the *Fictitious Names Act*, 54 Pa.C.S. § 301, et seq. (hereinafter, as amended from time to time, the “*Fictitious Names Act*”), § 303(b);

WHEREAS, beginning in approximately the spring of 2018, Respondent did not always provide consumers with valid tickets, or any tickets at all, even though consumers had paid in full for such tickets;

WHEREAS, as a result, consumers filed complaints with the Commonwealth and/or filed lawsuits against Respondent;

WHEREAS, the Commonwealth responded by initiating an investigation;

WHEREAS, based upon its investigation, the Commonwealth has concluded that Respondent received payment for at least 192 ticket orders in 2018, yet delivered tickets on only 35 of those orders;

WHEREAS, based upon its investigation, the Commonwealth has concluded that Respondent did not fulfill the remaining 157 of the 2018 orders, but did provide a full refund with respect to 124 of those orders;

WHEREAS, the Commonwealth has concluded that Respondent failed to provide valid tickets or refunds to the remaining 33 of the 192 consumers who purchased tickets in 2018, at a total cost of \$10,745, and that Respondent's failure to provide valid tickets has also resulted in additional costs to consumers of at least \$520;

WHEREAS, the Commonwealth has further concluded that by engaging in the behavior described above, Respondent has violated the *Unfair Trade Practices and Consumer Protection Law*, 73 P.S. § 201-1, *et seq.* (hereinafter, as amended from time to time, the "*Consumer Protection Law*") by, among other things:

- (i) advertising goods or services with intent not to sell them as advertised, 73 P.S. § 201-2(4)(ix);
- (ii) 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, 73 P.S. § 201-2(4)(vii); and
- (iii) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, by failing to deliver tickets to consumers who had ordered and paid for them, 73 P.S. § 201-2(4)(xxi);

WHEREAS, Respondent also failed to comply with the *Fictitious Names Act*, by operating a business in the Commonwealth of Pennsylvania under the name “Ticket Victory” without registration of that name as required by the *Fictitious Names Act*, and by virtue of such failure has also violated the *Consumer Protection Law*;

WHEREAS, Respondent agrees to cease and desist from violating the *Consumer Protection Law* and the *Fictitious Names Act* and desires to comply with the laws of the Commonwealth; and

WHEREAS, this Assurance of Voluntary Compliance is accepted by the Commonwealth pursuant to Section 201-5 of the *Consumer Protection Law* in lieu of commencing statutory proceedings under Section 201-4, 73 P.S. §§ 201-4, 201-5.

SETTLEMENT TERMS

NOW THEREFORE, having conducted trade and commerce within the Commonwealth, the Respondent agrees for himself, his successors, assigns, officers, partners, agents, representatives and all other persons acting on his behalf, jointly or individually, directly or indirectly, or through any corporate or business device, or otherwise, as follows:

I. Recitals

A. The above recitals are incorporated herein as though fully set forth herein.

II. Injunctive and Affirmative Relief

A. Respondent is permanently enjoined from acting in any capacity, whether as an owner, officer, board member, investor, manager, advisor, or consultant, for compensation or

otherwise, or in any similar capacity of any nature or kind, for or with respect to any business that engages in sales, advertising or marketing of goods or services via the use of the internet, directly or indirectly, through a third party, legal entity or otherwise (an “Internet Business”), except as expressly set forth in Section C below. The foregoing definition of Internet Business is with respect to any business operated from any location in the Commonwealth, or that engages in sales, advertising or marketing of goods or services to Pennsylvania consumers.

- B. Respondent is permanently enjoined from owning or controlling, in whole or in part, actively or passively, or operating, managing, or serving as an officer, principal, partner, manager of, or in any other capacity for, any Internet Business.
- C. Notwithstanding the foregoing, Respondent may be employed as an employee of an Internet Business, provided that Respondent does not hold or exercise any ownership, management authority or control of any kind or nature whatsoever, whether as an owner, officer, investor, manager, board member, advisor, consultant or otherwise, with respect to such Internet Business.
- D. Respondent is also permanently enjoined from engaging in or working for any business subject to the *Consumer Protection Law*, whereby he is able or empowered to hold, receive or otherwise exercise control over, payments or deposits from consumers which are not for the payment of goods or services delivered immediately at the time of the transaction.
- E. Respondent shall comply with any and all provisions of the *Consumer Protection Law* and *Fictitious Names Act* and is permanently enjoined from any violation thereof.

III. Monetary Relief

A. Amounts Payable

The total amount of Twenty-four thousand two hundred sixty five dollars and no cents (\$24,265) shall be paid by Respondent to the Commonwealth (subject to the suspension of civil penalties, as set forth in Part B below below), plus any Additional Restitution (as defined in Section III(A)(4) below), as follows:

1. Restitution. Ten Thousand seven hundred sixty-five dollars (\$10,765) shall be paid by the Respondent to the Commonwealth, prior to filing this Assurance of Voluntary Compliance, to be distributed by the Commonwealth as Restitution pursuant to Section 201-4.1 of the *Consumer Protection Law* to consumers identified by the Commonwealth who have alleged that they suffered harm as a result of Respondent's business practices. The amount, timing and manner of distribution of restitution shall be within the sole discretion of the Commonwealth. In the event that any funds remain after payment to consumers is completed, the Commonwealth may retain and apply any remaining funds.

2. Costs. Three thousand five hundred dollars (\$3,500) shall be paid by the Respondent to the Commonwealth, prior to filing this Assurance of Voluntary Compliance, to reimburse the costs incurred in pursuing this action, and shall be deposited into an interest-bearing account from which both principal and interest shall be expended for public protection and education purposes.

3. Civil Penalties. Civil penalties in the amount of ten thousand dollars (\$10,000) shall be paid by the Respondent, subject to suspension as described below.

4. Additional Restitution. In the event that there are additional consumers who have been harmed by the conduct cited herein and who have not as of the Effective Date (i) submitted complaints to the Commonwealth or (ii) been identified by Respondent to the Commonwealth, or have been identified by Respondent but the full extent of their damages has not been identified, Respondent agrees to pay restitution in addition to those amounts set forth above, as follows (hereinafter “Additional Restitution”):

- a. Respondent shall pay Additional Restitution, consistent with Section 201-4.1 of the *Consumer Protection Law*, 73 P.S. § 201-4.1, to any consumer who meets the following criteria: (i) the consumer submits a claim or complaint to Respondent or the Commonwealth within sixty (60) days of the Effective Date of this Assurance of Voluntary Compliance, as defined herein below, (ii) the complaint asserts that the consumer was harmed due to the conduct of Respondent as described herein above, (iii) the consumer provides adequate documentation that supports his or her claim or complaint and (iv) the claim or complaint is validated by the Commonwealth;
- b. Any Additional Restitution request that is postmarked by the sixtieth (60th) day after the Effective Date shall be deemed timely;
- c. The Commonwealth will provide Respondent with copies of all claims received;
- d. Respondent agrees to fully cooperate with the Commonwealth and shall supply the Commonwealth with any and all information and

documents requested by the Commonwealth, within twenty (20) days of the request, which regard to any consumers who submit complaints within the aforementioned sixty (60) day period;

- e. Respondent agrees that Additional Restitution shall be paid to the Commonwealth for consumers who demonstrate to the satisfaction of the Commonwealth that they were harmed by conduct of Respondent prior to the signing of this Assurance of Voluntary Compliance and as a result of violations of the *Consumer Protection Law*;
- f. The determination of whether a consumer shall receive Additional Restitution hereunder, the amount of any such restitution to be paid to such consumer, and the timing and manner of payments, shall be within the sole discretion of the Commonwealth; and
- g. The Commonwealth will provide Respondent with a list of validated claims submitted by consumers who are entitled to Additional Restitution hereunder, after which Respondent agrees to pay the amounts of Additional Restitution to the Commonwealth, in accordance with Section 5 below, within thirty (30) days of the Commonwealth submitting the list of validated complaints to Respondent.

5. Payment Terms. Amounts payable under Section III(A)(1), (2), and (4) above shall be paid, at Respondent's option, either (i) in the form of a certified check, cashier's check or money order made payable to the "Commonwealth of Pennsylvania, Office of Attorney

General” and shall be delivered to the following address: Pennsylvania Office of Attorney General, 1251 Waterfront Place, Mezzanine Level, Pittsburgh PA 15222, or (ii) paid by wire transfer in accordance with instructions provided in writing by the Commonwealth.

B. Suspended Amount

1. The entire civil penalty amount set forth in Section III(A)(3) above shall be suspended and shall not become due and payable by Respondent to the Commonwealth unless and until a court determines that Respondent has violated any of the terms of this Assurance of Voluntary Compliance.

2. Should the civil penalty set forth in Section III(A)(3) above be found to be due and payable by a court as set forth in the preceding paragraph, Respondent shall immediately pay such amount to the Commonwealth, in accordance with Section III(A)(5) above.

3. Respondent acknowledges that the requirement to pay such suspended civil penalty amount, resulting from a violation of any of the terms of this Assurance of Voluntary Compliance, shall be in addition to, and not in lieu of, any other sanctions that may be imposed under Section 201-8 of the *Consumer Protection Law*, or any other applicable law.

IV. Miscellaneous Terms

A. The Court of Common Pleas of Allegheny County, Pennsylvania shall maintain jurisdiction over the subject matter of this Assurance of Voluntary Compliance and over Respondent for the purpose of enforcing this Assurance of Voluntary Compliance.

B. Time shall be of the essence with regards to Respondent’s obligations hereunder.

C. Nothing in this Assurance of Voluntary Compliance shall be construed to waive or limit any right of action by any individual, person or entity, or by any local, state, federal or other governmental entity.

D. Respondent further agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Assurance of Voluntary Compliance, whether required prior to, contemporaneous with, or subsequent to the Effective Date.

E. Any failure of the Commonwealth to exercise any of its rights under this Assurance of Voluntary Compliance shall not constitute a waiver of its rights hereunder.

F. This Assurance of Voluntary Compliance may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Assurance of Voluntary Compliance may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart hereof.

G. This Assurance of Voluntary Compliance sets forth all of the promises, covenants, agreements, conditions and understandings between the parties, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied. There are no representations, arrangements, or understandings, oral or written, between the Parties relating to the subject matter of this Assurance that are not fully expressed herein or attached hereto. Each party specifically warrants that this Assurance is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

H. Respondent understands and agrees that if he made any false statement in or related to this Assurance of Voluntary Compliance, such statement is made pursuant to and under penalty of 18 Pa.C.S. § 4904 relating to unsworn falsifications to authorities.

I. Respondent agrees by the signing of this Assurance of Voluntary Compliance that he shall abide by each of the aforementioned provisions and that the breach of any one of these terms shall be sufficient warrant for the Commonwealth of Pennsylvania to petition the Court of Common Pleas of Allegheny County, or any court of competent jurisdiction, to require payment of the suspended civil penalties set forth above, to seek the penalties provided for under Section 201-8(a) of the *Consumer Protection Law*, 73 P.S. § 201-8(a), and to seek any other equitable relief which the Court deems necessary or proper.

J. The “Effective Date” of this Assurance of Voluntary Compliance shall be the day it is filed with the Court.

K. If any clause, provision or section of this Assurance of Voluntary Compliance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance of Voluntary Compliance and the Assurance of Voluntary Compliance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision was not set forth herein.

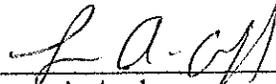
WHEREFORE, intending to be legally bound, the parties have hereto set their hands and seals.

FOR THE PETITIONER:

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

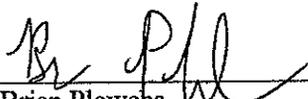
Date: 7/17/20

By: 
Susan A. Apel
Senior Deputy Attorney General
PA Attorney I.D. No. 50597
Office of Attorney General
1251 Waterfront Place, Mezzanine Level
Pittsburgh PA 15222
Telephone: 412-565-2578
Email: sapel@attorneygeneral.gov

FOR THE RESPONDENT:

BRIAN PLOWCHA, individually and d/b/a Ticket Victory

Date: 6/12/2020

By: 
Brian Plowcha

