



## **THE PARTIES**

1. Plaintiff is the Commonwealth of Pennsylvania, by Attorney General Michelle A. Henry, and is a governmental unit having offices at 1600 Arch Street, Philadelphia, PA 19103 and 15<sup>th</sup> Floor Strawberry Square, Harrisburg, PA 17120. The Commonwealth is a creditor of the Debtor.

2. Denise Hay is the Debtor in the above-captioned bankruptcy case and is an adult individual who resides at 20996 Cormorant Way, Ocean View, DE 19970.

3. This Court appointed George L. Miller, Esquire, with an office located at 1628 John F. Kennedy Blvd., Suite 950, Philadelphia, PA 19103, as the Chapter 7 Bankruptcy Trustee in this bankruptcy.

## **JURISDICTION, VENUE & STANDING**

4. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334(b).

5. This adversary proceeding has been referred to this Court pursuant to 28 U.S.C. § 157(a).

6. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

7. Venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. § 1409(a).

8. The Commonwealth has standing to bring this Complaint under the doctrine of *parens patriae*, and pursuant to the *Pennsylvania Unfair Trade Practices and Consumer Protection Law*, 73 P.S. § 201-1, et seq. (the “Consumer Protection Law”) under which it is authorized to restrain, by permanent or preliminary injunction, unfair methods of competition and

unfair or deceptive acts or practices declared unlawful therein and to seek restitution on behalf of consumers. 73 P.S. §§ 201-4 and 201-4.1.

### **PROCEDURAL BACKGROUND**

9. On June 25, 2022, the Debtor filed a voluntary petition for relief pursuant to chapter 7 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”) at case no. 22-10564 (LSS).

10. On September 16, 2022, this Court entered an *Agreed Order Extending the Time to File a Motion to Dismiss Under 11 U.S.C. § 707(b) and Extending the Time to File a Complaint Under 11 U.S.C. § 727* [D.I. 19]. The deadline to file a complaint pursuant to 11 U.S.C. § 727 was extended until February 28, 2023.

11. The Meeting of Creditors pursuant to 11 U.S.C. § 341 was concluded on October 18, 2022.

12. On March 2, 2023, this Court entered an *Agreed Order Extending the Time to File a Motion to Dismiss Under 11 U.S.C. §707(b) and Extending the Time to File a Complaint Under 11 U.S.C. §727* further extending the deadline for the Commonwealth to file a complaint pursuant to 11 U.S.C. § 727 to March 31, 2023. [D.I. 36].

13. On April 5, 2023, this Court entered an *Agreed Order Extending the Time to File a Motion to Dismiss Under 11 U.S.C. §707(b) and Extending the Time to File a Complaint Under 11 U.S.C. §727* further extending the deadline for the Commonwealth to file a complaint pursuant to 11 U.S.C. § 727 to April 30, 2023. [D.I. 39].

14. On April 28, 2023, the United States Trustee for Region 3 (the “U.S. Trustee”) filed an *Amended Motion for Order to Extend the Time to File a Motion to Dismiss Under 11 U.S.C.*

*§707(B) and to Extend the Time to File a Complaint Under 11 U.S.C. §727.* [D.I. 40] After a hearing, this Court granted the Motion and extended the deadline for the U.S. Trustee and the Commonwealth to file a motion pursuant to 11 U.S.C. § 707(b) and/or a complaint objecting to discharge under 11 U.S.C. § 727 until May 24, 2023. [D.I. 42].

### **FACTUAL ALLEGATIONS**

15. Prior to filing the Petition, the Debtor engaged in trade and commerce within the Commonwealth of Pennsylvania by operating a travel agency business.

16. The Debtor operated the travel agency business through Grand View Tours, Inc. (“Grand View”) and Ocean View Tours & Travel, LLC (“Ocean View”), collectively, the “Entities.”

17. Upon information and belief, at all times the Entities were wholly owned by the Debtor and Debtor had a primary role in directing and managing the operations of the business.

18. The Debtor accrued a number of unsecured debts through alleged fraudulent business practices.

19. Specifically, upon information and belief, the Debtor collected payments for a scheduled group trip to attend *The Passion Play* in Oberammergau, Germany (the “Trip”), originally scheduled to take place in May 2020.

20. Thirty-two (32) travelers (the “Travelers”) paid a total of approximately \$171,535.00 to participate in the Trip. Attached hereto as Exhibit A is an accounting of Trip payments made to the Debtor.

21. Upon information and belief, Travelers made these payments to the Debtor in 2019 to participate in the Trip.

22. Originally scheduled to occur in May 2020, the Trip was delayed until May 2022 because of the COVID-19 pandemic.

23. However, in February 2022, the Debtor notified Travelers that the Trip was permanently cancelled because Grand View was “not able to complete the travel arrangements.” Attached hereto as Exhibit B is the Debtor’s email to Father Costa which includes an example of the correspondence she sent to Travelers canceling the Trip.

24. None of the Travelers received a refund of the payments they made to the Debtor to participate in the Trip<sup>1</sup> and Debtor listed the Travelers on Schedule E/F as unsecured creditors. [D.I. 1].

25. By the Debtor’s own admission, she made payments totaling only \$80,989.46 to third-party vendors in connection with the Trip.

26. Upon information and belief, the Debtor retained the Travelers’ money for her own benefit without providing any goods or services to the Travelers.

27. To date, the Debtor has not produced any documentation nor provided an accounting to support that Debtor or the Entities paid vendors in connection with the Trip for the total amount received from Travelers.

28. To date, the Debtor has not refunded any money to the Travelers.

29. In July 2020, the Entities received insurance payments in the amount of \$64,468.72 intended as a refund to the Travelers. *See* Exhibit A.

30. Upon information and belief, the Debtor retained the insurance payment for her personal use and made no refund to the Travelers.

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<sup>1</sup> Upon information and belief, one of the Travelers may have received a \$400.00 refund in 2022.

31. The Debtor has not produced any bank statements that would explain why the funds were not repaid to the Travelers. Instead, Debtor has produced documents that do not adequately show how Travelers' funds were spent. *See Exhibit A.*

32. The Debtor's records also reflect that the Entities paid the Debtor \$20,625.00 in connection with the Trip. *See Exhibit A.*

33. The Debtor continued to pay herself from the Entities while not fulfilling the Entities' obligation to plan the Trip.

34. The Debtor has not adequately explained what happened to \$155,014.26 in payments made by Travelers for the Trip.

35. To date, the Commonwealth has received complaints from twenty-three (23) Travelers related to the Debtor's planned Trip. (Attached hereto as Exhibit C is a chart summarizing the complaints, and copies of each of the complaints (redacted to exclude personal identifiable and financial account information) are attached hereto as Exhibit D).

36. The Travelers' consumer complaints generally aver that the Debtor failed to deliver the contracted Trip or refund their funds upon cancellation in accordance with Debtor's representations and established course of conduct.

37. The Commonwealth avers that the consumer complaints it has received are representative of the experiences of other similarly situated Travelers, including those who have filed independent proofs of claim.

38. By way of example, Mary and Thomas Clemens purchased the Trip through Grand View and dealt specifically with Debtor Denise Hay. Mr. and Mrs. Clemens paid the Debtor a total of \$10,628, spread amongst 4 payments, all made using their American Express credit card. *See Clemens complaint at Exhibit D.*

39. On March 29, 2021, Mr. and Mrs. Clemens, along with the other passengers on the Trip, received an email from the Debtor, attached hereto as Exhibit E, stating the trip was rescheduled for May 2022. Then on February 11, 2022, the Debtor sent another email to the group stating that Grand View would be unable to put on the rescheduled May 2022 trip due to financial hardship. *See Exhibit B.* The only option given to Mr. and Mrs. Clemens was to accept a refund “over time” with no specific schedule. *See Clemens complaint at Exhibit D.*

40. Mr. and Mrs. Clemens attempted to initiate a chargeback with American Express that was ultimately denied due to Debtor’s response to American Express that she was giving customers credit on future travel and to not approve the chargeback. Mr. and Mrs. Clemens appealed the chargeback denial with American Express but were unsuccessful. *See Clemens complaint at Exhibit D.* The Debtor then filed her Bankruptcy Case two (2) weeks later.

41. Mr. and Mrs. Clemens also filed a claim attempting to collect on the optional trip insurance, for which they had paid the Debtor an additional \$619.00. The insurance company informed Mr. and Mrs. Clemens that the Debtor had made no arrangements for the coverage of the trip and all claims were denied. *See Clemens complaint at Exhibit D.*

42. Each Traveler who booked their trip through the Debtor reasonably relied upon, and made their decision based upon, the representations of the Debtor that she would remit all payments to the appropriate parties within the agreed upon time period so that the Trip could take place.

43. The Debtor knew or should have known that the Travelers relied upon the representations of the Debtor.

44. Based upon the Debtor's own financial records, Debtor knew, but intentionally failed to disclose to Travelers, that she had failed to remit the required funds to third parties and had instead engaged in misappropriation of those funds.

45. The Debtor knew or should have known that her false representations and failure to disclose an existing inability to perform would induce Travelers to forego attempts to recover payments held by the Debtor or third parties, which delay resulted in further misappropriation of funds by the Debtor.

46. As a result of the Debtor's failure to refund the aforementioned funds to the Travelers, the Travelers suffered losses.

47. The Debtor had an affirmative duty to remit payments received from Travelers to the appropriate parties so that the Trip could take place.

48. Despite this duty, on numerous occasions, as evidenced by the Debtor's own records, Debtor intentionally misappropriated for her own use, funds belonging to the Travelers and intended for purchase of the Trip.

49. The aforesaid acts and practices constitute unfair methods of competition and/or unfair or deceptive acts or practices as prohibited by Section 201-3 of the Consumer Protection Law, as defined by Section 201-2 of said Law, including without limitation:

- (a) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services, in violation of Section 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 a person has a sponsorship, approval, status, affiliation or connection that he does not have, in violation of Section 201-2(4)(v);
- (c) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, in violation of Section 201-2(4)(xxi).



73 P.S. §§ 201-3 and 201-2(4)(ii), (v) and (xxi).

**COUNT I**  
**NON-DISCHARGEABILITY OF DEBTOR'S**  
**DEBTS PURSUANT TO 11 U.S.C. § 523(a)(2)(A)**

50. The Commonwealth repeats and re-alleges each and every statement contained in the preceding paragraphs as if fully set forth at length herein.

51. Bankruptcy Code § 523(a)(2) does not discharge any debtor, under § 727, of any debt “for money . . . obtained by (A) false pretenses, a false representation, or actual fraud.” 11 U.S.C. § 523(a)(2).

52. The Debtor obtained money from the Travelers in exchange for the Trip, a trip the Debtor never provided.

53. Upon information and belief, the Debtor retained the payments made by the Travelers for the Trip for her own personal use.

54. Specifically, the Debtor did not deliver travel arrangements to the Travelers.

55. Previously, the Debtor alleged she made payments in relation to the Trip to other parties in the amount of \$80,989.73.

56. Even if the Debtor had made those payments to other parties, and they are legitimately attributable to the Trip, Debtor has not alleged any payments to vendors which would explain what occurred to the remaining \$90,545.27 or the insurance proceeds.

57. The Debtor has been unable to explain why she and the Entities cannot repay the Travelers the money they paid to the Debtor or why the Travelers did not receive the proceeds from the insurance.

58. The Debtor simply stated that the Entities were stressed as a result of COVID-19 when explaining why the trip would not go forward as planned and why the Travelers would not receive a refund. *See* Exhibit B.

59. The Debtor therefore obtained the money under a false pretense, through a false representation, or actual fraud within the meaning of Bankruptcy Code § 523(a)(2)(A).

WHEREFORE, the Debtor should not be able to obtain a discharge of the debts owed to the Travelers pursuant to Bankruptcy Code § 523(a)(2)(A).

**COUNT II**  
**NON-DISCHARGEABILITY OF DEBTOR'S**  
**DEBTS PURSUANT TO 11 U.S.C. § 523(a)(4)**

60. The Commonwealth repeats and re-alleges each and every statement contained in the preceding paragraphs as if fully set forth at length herein.

61. Bankruptcy Code § 523(a)(4) prohibits the discharge of a debtor when there is “fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.” 11 U.S.C. § 523(a)(4).

62. To date, and based upon the Debtor’s own accounting, Debtor can, at most, account for only \$39,993.01 in expenses to vendors and \$23,472.00 in payments to the Debtor or other payroll expenses in relation to the Trip. *See* Exhibit A.

63. The Debtor admits to receiving payments from Travelers totaling \$171,535.00 in connection with the Trip. *See* Exhibit A.

64. By the Debtor’s own admission, she cannot account for at least, \$139,265.99 in money paid by the Travelers. The Commonwealth believes the actual amount may be higher.

WHEREFORE, the Debtor should not be able to obtain a discharge of the debts owed to the Travelers pursuant to Bankruptcy Code § 523(a)(4).

**COUNT III**  
**NON-DISCHARGEABILITY OF DEBTOR'S**  
**DEBTS PURSUANT TO 11 U.S.C. § 523(a)(7)**

65. The Commonwealth repeats and re-alleges each and every statement contained in the preceding paragraphs as if fully set forth at length herein.

66. Bankruptcy Code § 523(a)(7) prohibits the discharge of a debtor from any debt to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss. . . ." 11 U.S.C. § 523(a)(7).

67. Pursuant to § 201-8(b) of the Consumer Protection Law, a court may issue a civil penalty up to one thousand dollars (\$1,000) per violation of the Consumer Protection Law for all willful violations, and where the victim of the willful violation is sixty years of age or older, the civil penalty shall not exceed three thousand dollars (\$3,000) per violation. 73 P.S. § 201-8(b).

WHEREFORE, the Debtor should not be able to obtain a discharge of the civil penalties owed to the Commonwealth pursuant to Bankruptcy Code § 523(a)(7).

**COUNT IV**  
**NON-DISCHARGEABILITY OF**  
**DEBTOR PURSUANT TO SECTION 727(a)(5)**

68. The Commonwealth repeats and re-alleges each and every statement contained in the preceding paragraphs as if fully set forth at length herein.

69. Bankruptcy Code § 727(a)(5) prohibits the discharge of a debtor who has “failed to explain satisfactorily, before determination of denial of discharge . . . any loss of assets or deficiency of assets to meet the debtor’s liabilities.” 11 U.S.C. § 727(a)(5).

70. The Debtor received money from the Travelers for the Trip but did not complete travel arrangements and did not return the insurance proceeds to the Travelers.

71. When the Debtor cancelled the Trip, she made no refund of the Travelers’ money.

72. The Debtor’s own records show that the Entities did not pay the full amount paid by the Travelers to vendors in connection with the Trip.

73. The Debtor has not adequately explained the deficiency of assets to meet the Debtor’s liabilities to the Travelers.

WHEREFORE, the Debtor’s discharge should be denied pursuant to Bankruptcy Code § 727(a)(5).

**WHEREFORE**, the Commonwealth respectfully requests this Court enter a Judgment against the Debtor (i) denying Debtor’s discharge under Bankruptcy Code § 727(a)(5); (ii) determining that the Travelers and Commonwealth’s claims are nondischargeable under Bankruptcy Code §§ 523(a)(2)(A), 523(a)(4) and 523(a)(7); and (iii) granting any and all such other and further relief that the Court deems just and proper.

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Dated: May 24, 2023

Respectfully submitted,

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