

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF FREDERICKSBURG

COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL,

Plaintiff,

v.

JAMES R. CLORE, JR.,
an individual t/a Virginia Stairlifts and
New Beginnings Mobility,

SERVE: James R. Clore, Jr.
200 Fauquier Street, Apt. A
Fredericksburg, Virginia 22401
(City of Fredericksburg)

ACCESS MOBILITY EQUIPMENT, LLC,
a Virginia limited liability company,

SERVE: James R. Clore, Jr., Registered Agent
10816 Tidewater Trail # 1123
Fredericksburg, Virginia 22408
(County of Spotsylvania)

and

2911 MOBILITY, LLC,
a Virginia limited liability company,

SERVE: Registered Agents, Incorporated,
Registered Agent,
4445 Corporation Lane, Suite 264
Virginia Beach, Virginia 23462
(City of Virginia Beach)

Defendants.

CIVIL ACTION NO. CW19-435

FILED

MAY 08 2019

FREDERICKSBURG
CIRCUIT COURT

COMPLAINT

The Plaintiff, Commonwealth of Virginia, by, through, and at the relation of its Attorney General, Mark R. Herring (the “Plaintiff” or the “Commonwealth”), petitions this Court to declare that the activities in which the Defendants, James R. Clore, Jr. (“Clore”), an individual t/a Virginia Stairlifts and New Beginnings Mobility, Access Mobility Equipment, LLC (“Access Mobility”), and 2911 Mobility, LLC (“2911 Mobility”), have engaged constitute violations of the Virginia Consumer Protection Act (“VCPA”), Virginia Code §§ 59.1-196 through 59.1-207, and Virginia Code § 54.1-1115(B)(i), which prohibits contracting without a license; to enjoin these violations; to restore to consumers the sums acquired from them in violation of the VCPA and § 54.1-1115(B)(i); to award civil penalties, expenses, and attorneys’ fees due to the Commonwealth; and to grant such other relief requested in this Complaint.

The Commonwealth prays that this Court grant the relief requested in this Complaint and states the following in support thereof:

JURISDICTION AND VENUE

1. The Commonwealth brings this action pursuant to the authority set forth in § 59.1-203 of the VCPA, which provides, among other things, that the Attorney General may bring an action to enjoin any violation of the VCPA. Section 54.1-1115(B)(i) provides that any violation of that subsection involving a consumer transaction is also a violation of the VCPA.

2. The Circuit Court for the City of Fredericksburg has authority to entertain this action and to grant the relief requested herein pursuant to Virginia Code §§ 8.01-620, 17.1-513, 59.1-203, 59.1-205, and 59.1-206.

3. Venue is permissible in this Court pursuant to Virginia Code § 8.01-262 (1), (3), and (4) because Defendant Clore resides in the City of Fredericksburg, because there exists a practical nexus to the City of Fredericksburg including the location of fact witnesses and other

evidence to the action, because the Defendants regularly conduct or conducted substantial business activity in the City of Fredericksburg, and because portions of the causes of action arose in the City of Fredericksburg. Venue is preferred in this Court pursuant to Virginia Code § 8.01-261(15)(c) because some or all of the acts to be enjoined are, or were, being done in the City of Fredericksburg.

4. In accordance with Virginia Code § 59.1-203(B), prior to commencement of this action, the Plaintiff gave the Defendants written notice that these proceedings were contemplated and a reasonable opportunity to appear before the Office of the Attorney General to demonstrate that no violations of the VCPA had occurred, or in the alternative, to execute an appropriate Assurance of Voluntary Compliance that is acceptable to the Commonwealth. The Defendants did not respond to the written notice.

PARTIES

5. The Plaintiff is the Commonwealth of Virginia, by, through, and at the relation of Mark R. Herring, Attorney General of Virginia.

6. Defendant Clore is an individual who has conducted business as a sole proprietorship under the names Virginia Stairlifts and New Beginnings Mobility, and also through corporate entities Access Mobility Equipment, LLC and 2911 Mobility, LLC. On information and belief, Defendant Clore currently resides at 200 Fauquier Street, Apt. A, Fredericksburg, Virginia 22401 in the City of Fredericksburg.

7. Defendant Access Mobility is a Virginia limited liability company. Its Certificate of Organization was issued by the Virginia State Corporation Commission (“SCC”) on November 14, 2007. Access Mobility’s corporate status was terminated automatically by the SCC on February 29, 2016. On information and belief, Clore is the sole owner, member,

manager, and employee of Access Mobility.

8. Defendant 2911 Mobility is a Virginia limited liability company. Its Certificate of Organization was issued by the SCC on July 10, 2018. On information and belief, Clore is the sole owner, member, manager, and employee of 2911 Mobility.

9. Defendants Clore, Access Mobility, and 2911 Mobility (hereinafter referred to, collectively, as the “Defendants”) are not, and at all relevant times herein were not, licensed as contractors by the Virginia Department of Professional and Occupational Regulation’s Board for Contractors.

FACTS

10. The Defendants have provided contractor services to individuals in their homes, offering contractor services with estimates for jobs greater than \$1,000 in various locales across the Commonwealth, focusing primarily in the Fredericksburg area.

11. The Defendants have offered to provide and, where applicable, install in consumers’ homes, mobility aids and equipment and related goods and services. The offered goods and related installation services are geared towards elderly consumers, consumers with physical disabilities, and consumers with other mobility-limiting medical conditions. Among other products and services offered, the Defendants offered to deliver and install stairlifts, wheelchair ramps, and walk-in bathtubs in consumers’ homes, and also offered mobility scooters for sale and delivery to consumers.

12. The Defendants have engaged in a pattern and practice of contracting to provide the aforementioned goods and contractor services to consumers, obtaining large, up-front deposits from consumers in advance of delivering the goods and performing the services, and failing to follow through with the delivery of the goods and completion of those services as

promised. The up-front deposits the Defendants required typically exceeded seventy-five percent (75%) of the total quoted price of the product and any necessary installation. The Defendants did not ask that consumers sign contracts, and, though some consumers were supplied with invoices, the Defendants typically provided consumers with little, if any, documentation regarding their transactions.

13. The Defendants promised that the delivery and any applicable installation would be performed by a date certain. Those dates came and went, and the Defendants did not deliver the promised goods and services. Instead, the Defendants provided a litany of excuses as to why the work could not be completed on time. The excuses provided by the Defendants included purported illnesses of Clore and his family members, Clore's household emergencies, problems with suppliers, and that incorrect parts for the product or installation were ordered. The Defendants often repeatedly supplied consumers with revised delivery and installation dates that also went unfulfilled, furnishing consumers with similar excuses as to why the revised delivery and installation dates could not be met.

14. As consumers grew frustrated with the repeatedly-missed delivery and installation dates, they demanded their money back from the Defendants. The Defendants often promised to refund the consumers' payments – many times in writing. The Defendants typically did not follow through with their promises to reimburse consumers, often providing another litany of excuses and supplying consumers with repeatedly-revised refund dates that also went unfulfilled. In some instances, the Defendants went as far as to create shipping labels with tracking numbers, furnish consumers with the tracking numbers, but did not actually send the packages, to give consumers the false impression that the refund check had been mailed.

15. Consumers who received any reimbursement whatsoever usually received very

small portions of what they paid to the Defendants, and only after the consumers angrily made numerous demands for their money or sought the assistance of law enforcement. Few consumers received full reimbursement from the Defendants.

16. In a form letter issued to consumers in the middle of October 2018, Clore acknowledged specific debts, and indicated that he was planning on filing a personal and business Chapter 13 bankruptcy petition. In this form letter, he told consumers that they would be receiving regular payments from the bankruptcy trustee, and that he would be filing his bankruptcy petition “within the next 10-15 days.” In the same letter, Clore told consumers that his debt to the consumers was not dischargeable, and made baseless claims that the consumers would receive a higher priority than other, similarly-situated creditors. To date, neither Clore nor his affiliated business entities have filed bankruptcy petitions.

17. The Defendants also promised to help some consumers in removing and selling used stairlift equipment from consumers’ homes. In connection with those promises, the Defendants represented that they would split the sale proceeds with the consumer, however consumers did not receive any of the promised sales proceeds after the stairlift equipment was removed from their homes.

CAUSE OF ACTION

Virginia Consumer Protection Act

18. The Plaintiff re-alleges and incorporates herein by reference all matters set forth in Paragraphs 1 through 17 above.

19. The Defendants are now, and were at all relevant times mentioned herein, “suppliers” of “goods” or “services” in connection with “consumer transaction[s]” as those terms are defined in § 59.1-198 of the VCPA.

20. By advertising, selling, and offering for sale services as a contractor to consumers in their homes, and by offering for sale related mobility aids and equipment, the Defendants have engaged and do engage in “consumer transaction[s],” as defined in § 59.1-198 of the VCPA.

21. By undertaking to bid upon, accepting, and offering to accept various contracts over \$1,000 for the construction, removal, repair, and improvement in consumers’ homes, the Defendants are “contractors,” as defined in Virginia Code § 54.1-1100, requiring a Virginia contractor’s license under Virginia Code § 54.1-1103.

22. In undertaking contractor work without a valid Virginia contractor’s license; failing to deliver goods and perform installations as promised; making false representations regarding why products and services could not be provided as promised; falsely representing that they would file for bankruptcy and that debts to consumers would be prioritized over other business debts; entering in, and failing to adhere to written agreements to refund consumers; making various other false statements and unfulfilled promises relating to the promised refunds; and making false statements in connection with promises to assist consumers in selling their used stairlift equipment, the Defendants have engaged in the following acts and practices, which are prohibited practices under the VCPA:

- a. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised, in violation of § 59.1-200(A)(8);
- b. Using any deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction, in violation of § 59.1-200(A)(14);
- c. Entering into a written agreement to resolve a dispute that arises in

connection with a consumer transaction, and failing to adhere to the terms and conditions of such an agreement, in violation of § 59.1-200(A)(17); and

d. Violating the provisions of Virginia Code § 54.1-1115(B)(i) by undertaking work without a valid Virginia contractor's license or certificate when a license or certificate is required, in violation of § 59.1-200(A)(46).

23. In addition to the liability Defendant Clore has for statutory violations he committed in his personal capacity or in connection with any sole proprietorship, Defendant Clore also may be held liable for all acts and practices committed in violation of the VCPA and § 54.1-1115(B)(i) through Defendants Access Mobility and 2911 Mobility because Defendant Clore formulated, directed, controlled, approved, and participated in each act and practice in violation of the referenced statutes.

24. Individual consumers have suffered losses as a result of the Defendants' violations of § 59.1-200(A)(8), (14), (17), and (46) of the VCPA.

25. The Defendants have willfully engaged in the acts and practices described in this Complaint in violation of the VCPA.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, Commonwealth of Virginia, prays that this Court:

A. Permanently enjoin the Defendants from violating Virginia Code § 59.1-200(A)(8), (14), (17), and (46) of the VCPA, pursuant to Virginia Code § 59.1-203;

B. Grant judgment against the Defendants, jointly and severally, and award to the Commonwealth, as trustee, all sums necessary to restore to any consumers the money or property acquired from them by the Defendants in connection with their violations of § 59.1-200(A)(8), (14), (17), and (46) of the VCPA and Virginia Code § 54.1-1115(B)(i), pursuant to Virginia

Code § 59.1-205;

C. Enter any additional orders or decrees as may be necessary to restore to any consumers the money or property acquired from them by the Defendants in connection with their violations of § 59.1-200(A)(8), (14), (17), and (46) of the VCPA and Virginia Code § 54.1-1115(B)(i), pursuant to Virginia Code § 59.1-205;

D. Grant judgment against the Defendants, jointly and severally, and award to the Commonwealth civil penalties of up to \$2,500 per willful violation of § 59.1-200(A)(8), (14), (17), and (46) of the VCPA and Virginia Code § 54.1-1115(B)(i), pursuant to Virginia Code § 59.1-206(A);

E. Grant judgment against the Defendants, jointly and severally, and award to the Commonwealth its costs, reasonable expenses incurred in investigating and preparing the case up to \$1,000.00 per violation of § 59.1-200(A)(8), (14), (17), and (46) of the VCPA and Virginia Code § 54.1-1115(B)(i), and its attorneys' fees, pursuant to Virginia Code § 59.1-206(C); and

F. Order such other and further relief as may be deemed proper and just.

COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL

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