

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

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COMMONWEALTH OF VIRGINIA,)
EX REL. MARK R. HERRING,)
ATTORNEY GENERAL,)
)
	Plaintiff,)
)
	v.)
)
SEA-THRU WINDOWS, INC.,)
)
&)
)
JEFFERY C. PESICH,)
)
	Defendants.)
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Case No. CL17-2724

PERMANENT INJUNCTION AND FINAL JUDGMENT

On August 25, 2017 and December 1, 2017, the Plaintiff, Commonwealth of Virginia, *ex rel.* Mark R. Herring, Attorney General, by counsel, moved for entry of a default judgment and a permanent injunction and final judgment against Defendants Sea-Thru Windows, Inc. (“Sea-Thru”) and Jeffery C. Pesich. Based on the Commonwealth’s Complaint, the consumer and other witness affidavits presented, official records presented, argument of counsel for the Commonwealth, no answer or other response having been filed to the Complaint, and no appearance having been made, either in person, by counsel, or in writing by the Defendants, the Court finds as follows:

1. The Commonwealth filed its Complaint instituting this matter on June 9, 2017. The Complaint alleged the Defendants violated the Virginia Consumer Protection Act,

Va. Code §§ 59.1-196 through 29.1-207, and the Virginia Home Solicitation Sales Act, Va. Code § 59.1-21.4.

2. Before filing its Complaint, the Commonwealth offered the Defendants a reasonable opportunity to appear and to show that they had not violated these statutes or to execute a settlement, an Assurance of Voluntary Compliance. The Defendants never responded to this offer.

3. The Commonwealth served the Defendants with its Summons and Complaint.

4. On August 25, 2017, this Court found the Defendants in default and set a further hearing to determine damages and other relief.

5. The Complaint alleges and the affidavits and records submitted establish the following facts in support of this permanent injunction and final judgment.

6. During the period from 2004 to March 2017, Sea-Thru was a licensed contractor offering residential window installation services to homeowners in central and eastern Virginia, primarily in the Hampton Roads region. By advertising, offering, and providing residential window installation services to Virginia consumers, Sea-Thru acted as a “supplier” of “goods” and “services,” and engaged in “consumer transactions,” as those terms are defined in § 59.1-198 of the Virginia Consumer Protection Act.

7. Mr. Pesich has been Sea-Thru’s President, sole owner, and sole director.

8. On March 7, 2017, the Virginia Board for Contractors revoked Sea-Thru’s contractor’s license in part for intentional and unjustified failure to complete work contracted for and for failing to comply with the terms of its contracts with homeowners. Mr. Pesich was the responsible managing officer for Sea-Thru’s contractor’s license.

9. From 2015 to 2017, Sea-Thru and Mr. Pesich engaged in a pattern of improper or dishonest conduct by failing to perform window installations. During this time, they repeatedly accepted customer down payments for window installations and then failed to start or complete the contracted-for work. Nor did they provide any customer refunds, despite customers' repeated requests. They entered into contracts with, received initial down payments from, and performed no work for the following customers:

Beckett, David
Brewer, Sonja
Brown, Steven
Bruch, Terri
Burton-Sayers, Dorothy
Cartwright, Billie
Cooper, Alfonzo
Davis, Joann
Foster, Stephen
Glover, Delores
Graman, Rory
Graves, Alecia
Green, Pandora
Manner, James
Mathias, Daryl
Miller, Danja
Miller, Philip
Payne, Angela
Pohl, James
Pongratz, Paul
Rays, Tatiana
Sandoval, Amy
Scott-Kelly, Carlethia
Trypuc, Steven
Urbano, Joseph
Wilson, Robert

10. Sea-Thru and Mr. Pesich lied about why work never commenced. They blamed manufacturing delays, inclement weather, equipment failures, and employee illnesses. Their false excuses provide further evidence they never intended to complete the contracted-for work.

11. By engaging in a pattern of requesting and accepting down payments when they had no intention of completing the work, Sea-Thru and Mr. Pesich engaged in improper or dishonest conduct and violated Virginia Consumer Protection Act § 59.1-200(A)(8) and (14).

12. Sea-Thru and Mr. Pesich also engaged in a pattern of improper or dishonest conduct in failing to honor customers' warranty claims. Sea-Thru provided customers with lifetime warranties for its windows, guaranteeing them to be free from defects for the life of the home. However, Defendants failed to honor valid warranty claims when customers presented them. Defendants did this in three main ways. First, Defendants' employees would tell customers that Sea-Thru intended to honor the warranty and, in many cases, would schedule a time to make the needed repairs, but then Defendants' employees would miss the appointment – customers would wait in vain and no one would come to make the repairs. Second, in some cases, Defendants did send employees out to assess warranty claims and these employees would determine repairs were needed and were covered by Sea-Thru's warranty. But no further help came: Defendants would not follow-up or perform the needed repair work, despite customers' pleas. Third, Sea-Thru might send employees or sub-contractors to make warranty repairs, but the repairs would be substandard: the workers would fail to complete the installation of needed replacement windows; would install replacements but would do so in a substandard manner, leaving gaps, leaks, or substandard caulking; would install replacement windows that were of

inferior quality to the windows originally purchased; or would fail to fully repair cracks, leaks, caulking, mechanical defects, or other window-related problems. When customers complained about substandard warranty repairs, Sea-Thru would again falsely promise to fix the problems, but rarely did.

13. As a result of Defendants' misrepresentations about warranties, Sea-Thru and Mr. Pesich violated Virginia Consumer Protection Act § 59.1-200(A)(14). The following customers were harmed by these dishonest or improper warranty practices:

Almachar, Evelyn
Arrington, Sam
Barker, Brian
Bodurtha, William
Brickhouse, Michelle
Campbell, William
Carmody, Kenneth
Coleman, Benjamin
Fordham, Lori
Goetz, Martin
Heath, Walter
Kapko, Anna Christine
Kotnik, Jerome
Lamb, Andrew
Lockard, Jamie
Musgrave, Jonathan
Nemetz, Steven
Nored, Labarren
Olive, Michele
Oliver, James
Pentecost, John
Powell, Frank
Powell, Shirley
Putman, Catherine
Rivera, Leticia

Sargent, Chase
Smith, Alan
Spearman, Charles
Stables, James
Sytsma, Krist
Tingle, Mary
Washington, Stephanie
Watson, Sandra
Weathers, William
White, Scott
Woods, Steve
Wright, Ronald

14. From 2015 through 2016, Sea-Thru solicited home improvement contracts at homeowners' residences. Sea-Thru's contracts failed to have the heading "BUYER'S RIGHT TO CANCEL" and failed to include in the text or as a separate notice a notice of cancellation form for the homeowner to use. Section 59.1-21.4 of the Virginia Home Solicitation Sales Act provides that a seller must include in any written agreement a statement of the buyer's right to cancel under a "conspicuous caption" that is "in bold face type of a minimum size of ten points" that reads "BUYER'S RIGHT TO CANCEL," and that the seller must include a "Notice of Cancellation" form for the buyer to make the cancellation. Under Va. Code § 59.1-200(A)(19), a violation of the Virginia Home Solicitation Sales Act is also a violation of the Virginia Consumer Protection Act. By failing to include the required disclosures of the right to cancel, Sea-Thru's contracts violated § 59.1-21.4 and therefore violated § 59.1-200(A)(19).

15. Mr. Pesich formulated, directed, controlled, approved, and participated in each of Sea-Thru's acts, including the acts described above.

16. The Defendants' customers have suffered losses as a result of Defendants' misconduct and statutory violations. Those customers include those listed below in paragraph 2,

the restitution portion of this judgment, and, in addition, the following former customers who already have obtained judgments against Sea-Thru or Mr. Pesich or both: Charles Allen, Nicole Credle, William Morgan, Dorothy Scarborough, Tracy Spenser, Neta Synigal, and Evelyn Wilson.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that

1. Sea-Thru, Mr. Pesich, and anyone acting in concert with either one of them with knowledge of this injunction are permanently enjoined from any future violations of the Virginia Consumer Protection Act § 59.1-200(A)(8), (14), or (19).

2. The Commonwealth of Virginia, as trustee, shall have judgment against and recover from Sea-Thru and Pesich, jointly and severally, the sum of \$149,924.34, with interest from this date at the judgment rate of 6% per year for the use and benefit of, and restitution to, the following individuals who paid monies to the Defendants for window installation services that Defendants did not provide, or whose warranty claims Defendants failed to honor, all of whose losses were proven at trial:

Consumer	Restitution Amount
Beckett, David	\$5,197.50
Brewer, Sonja	\$1,144.00
Brown, Steven	\$4,674.00
Bruch, Terri	\$3,105.00
Burton-Sayers, Dorothy	\$4,131.00
Cartwright, Billie	\$3,090.00
Cooper, Alfonzo	\$989.50
Davis, Joann	\$2,505.00
Foster, Stephen	\$384.00
Glover, Delores	\$896.00
Graman, Rory	\$2,130.50
Graves, Alecia	\$1,774.50
Green, Pandora	\$1,221.00

Heath, Walter	\$440.00
Manner, James	\$1,496.00
Mathias, Daryl	\$2,076.00
Miller, Danja	\$560.50
Miller, Philip	\$3,503.00
Payne, Angela	\$681.00
Pohl, James	\$1,144.00
Pongratz, Paul	\$2,232.00
Rays, Tatiana	\$730.50
Sandoval, Amy	\$3,232.00
Scott-Kelly, Carlethia	\$680.00
Trypuc, Steven	\$4,000.00
Urbano, Joseph	\$900.00
Wilson, Robert	\$740.15
Almachar, Evelyn	\$4,249.80
Arrington, Sam	\$1,935.00
Barker, Brian	\$2,329.00
Bodurtha, William	\$3,998.00
Brickhouse, Michelle	\$289.63
Campbell, William	\$2,599.00
Carmody, Kenneth	\$2,472.00
Coleman, Benjamin	\$3,038.00
Fordham, Lori	\$1,397.50
Goetz, Martin	\$3,525.00
Kapko, Anna Christine	\$3,401.00
Kotnik, Jerome	\$2,795.00
Lamb, Andrew	\$2,623.00
Lockard, Jamie	\$2,000.00
Musgrave, Jonathan	\$3,060.00
Nemetz, Steven	\$6,470.00
Nored, Labarren	\$6,900.00
Olive, Michele	\$1,544.00
Oliver, James	\$3,666.00
Pentecost, James	\$4,000.00
Powell, Frank	\$749.80

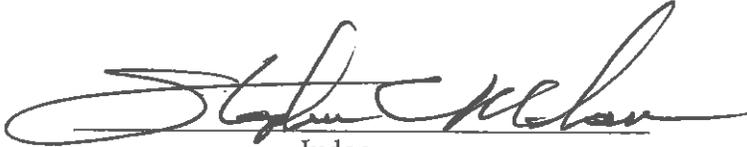
Powell, Shirley	\$275.00
Putman, Catherine	\$720.00
Rivera, Leticia	\$1,395.00
Sargent, Chase	\$3,500.00
Smith, Alan	\$1,970.76
Spearman, Charles	\$2,040.00
Stables, James	\$4,034.00
Sytsma, Krist	\$1,500.00
Tingle, Mary	\$1,540.00
Washington, Stephanie	\$1,945.00
Watson, Sandra	\$3,399.00
Weathers, William	\$4,282.00
White, Scott	\$2,766.75
Woods, Steve	\$2,970.55
Wright, Ronald	\$887.40
Total Restitution	\$149,924.34

3. Under Virginia Consumer Protection Act § 59.1-205, this Court will retain jurisdiction of this matter for 200 days after entry if additional orders are necessary to include other consumer victims.

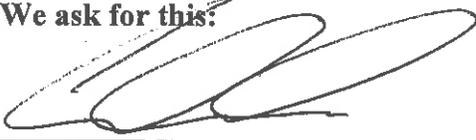
4. The Commonwealth shall have judgment against and recover from Sea-Thru and Mr. Pesich, jointly and severally, the sum of \$64,000 for civil penalties, with interest from this date at the judgment rate of 6% per year, and \$47,068 for attorneys' fees and costs, with interest from this date at the judgment rate of 6% per year.

5. This matter is continued on the active docket for 200 days, after which time, in the absence of further orders, it will then be stricken from the active docket and placed among the ended causes, with leave granted to the Commonwealth to reinstate it for enforcement.

ENTER: 12 / 1 / 2017


Judge

We ask for this:



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