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CHESAPEAKE CIRCUIT COURT

BY _____ D.C.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

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

Plaintiff,)

v.)

GERALD LEE WHITFIELD,)
an individual d/b/a Whitfield's Home Improvements,)

Defendant.)

CIVIL ACTION NO. CL18-3580

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 Defendant, Gerald Lee Whitfield, individually and doing business as Whitfield's Home Improvements ("Whitfield" or the "Defendant") has 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 one consumer the sums acquired from him in violation of the VCPA; and to award civil penalties, expenses, and attorneys' fees to the Commonwealth. 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 Chesapeake 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 the Defendant resides and has his principal place of employment in the City of Chesapeake, because there exists a practical nexus to the City of Chesapeake including the location of fact witnesses, the Plaintiff's office, and other evidence to the action, because the Defendant regularly conducts substantial business activity in the City of Chesapeake, and because portions of the causes of action arose in the City of Chesapeake. 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 Chesapeake.

4. In accordance with Virginia Code § 59.1-203(B), prior to commencement of this action, the Plaintiff gave the Defendant 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 Defendant agreed to execute an Assurance of Voluntary Compliance, which is acceptable to the Commonwealth.

PARTIES

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

6. The Defendant, Gerald Lee Whitfield, is an individual who conducts business as a sole proprietorship under the name Whitfield's Home Improvements. On information and belief, the Defendant currently resides at, and his contractor work is based out of, 202 Woods Edge Court, Chesapeake, Virginia 23323-3917. Whitfield's Home Improvements is not incorporated or otherwise registered with the Virginia State Corporation Commission. Whitfield is not, and at all relevant times herein has not been, licensed as a contractor by the Virginia Department of Professional and Occupational Regulation Board for Contractors.

FACTS

7. Whitfield is an individual doing business under the name Whitfield's Home Improvements who has provided contractor services to at least one individual in the consumer's home. Whitfield has provided contractor services under a contract for at least one job greater than \$1,000 in the City of Chesapeake, with his Chesapeake address listed on business documents including the contract.

8. At least one consumer hired Whitfield to do repairs and renovations, paid Whitfield payments as agreed, and did not receive the contracted for and promised services.

9. Whitfield entered into a contract with the consumer on June 7, 2016 for payments totaling \$14,910 to complete various remodeling projects in the consumer's home, including framing, hanging drywall, painting, and refinishing floors to be completed by July 7, 2016.

10. The contract describes Whitfield as a "Contractor," and indicates among other things, that insurance would be obtained.

11. On information and belief, the consumer made two required payments totaling \$8,796 for the work, which was never completed pursuant to the terms of the contract, and the consumer ultimately expended additional monies to repair the work previously performed by

Whitfield.

12. On information and belief, on at least one occasion, Whitfield represented to the consumer that he was licensed to do electrical work, when in fact he has never held a tradesmen license with an electrical specialty as required by Virginia Code §§ 54.1-1128 and 54.1-1129.

13. Whitfield advertised contractor work to the public including electrical, plumbing, flooring, and fence and deck installation work.

14. Whitfield is not, and at the relevant times was not, licensed by the Virginia Department of Professional and Occupational Regulation Board for Contractors, and on information and belief, Whitfield was not insured at the relevant times he was providing services as a contractor.

15. On information and belief, Whitfield made other false statements and unfulfilled promises throughout his transactions with the consumer, including with regard to when painting and other tasks would be completed, and after failing to complete the work, left the house in “shambles.”

CAUSES OF ACTION

16. The Plaintiff re-alleges and incorporates herein by reference all matters set forth in Paragraphs 1 through 15 above.

17. The Defendant is now, and was at all relevant times mentioned herein, a “supplier” of “goods” or “services” in connection with “consumer transaction[s]” as those terms are defined in § 59.1-198 of the VCPA.

18. By advertising, selling, and offering for sale services as a contractor to consumers in their homes, the Defendant has engaged and does engage in “consumer transaction[s],” as defined in § 59.1-198 of the VCPA.

19. By undertaking to bid upon, accepting, and offering to accept a contract over \$1,000 for the construction, removal, repair, and improvement in a consumer's home, the Defendant is a "contractor," as defined in Virginia Code § 54.1-1100, requiring a Virginia contractor's license under Virginia Code § 54.1-1103.

20. In undertaking work without a valid Virginia contractor's license, falsely indicating that he was licensed to provide contractor services, failing to complete work as promised, and making various other false statements and unfulfilled promises, the Defendant has engaged in the following acts and practices, which are prohibited practices under the VCPA:

- a. Misrepresenting the source, sponsorship, approval, or certification of goods or services, in violation of § 59.1-200(A)(2);
- b. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits, in violation of § 59.1-200(A)(5);
- c. Advertising goods or services with intent not to sell them as advertised, or with the intent not to sell at the price or upon the terms advertised, in violation of § 59.1-200(A)(8);
- d. Using any deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction, in violation of § 59.1-200(A)(14); and
- e. 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).

21. Individual consumers have suffered losses as a result of the Defendant's violations of § 59.1-200(A)(2), (5), (8), (14), and (46) of the VCPA.

22. The Defendant has 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 Whitfield from violating Virginia Code § 59.1-200(A)(2), (5), (8), (14), and (46) of the VCPA and Virginia Code § 54.1-1115(B)(i), pursuant to Virginia Code § 59.1-203;

B. Grant judgment against Whitfield and award to the Commonwealth all sums necessary to restore to any consumers the money or property acquired from them by Whitfield in connection with his violations of § 59.1-200(A)(2), (5), (8), (14), and (46) of the VCPA and Virginia Code § 54.1-1115(B)(i), pursuant to Virginia Code § 59.1-205;

C. Grant judgment against Whitfield and award to the Commonwealth civil penalties of up to \$2,500 per willful violation of § 59.1-200(A)(2), (5), (8), (14), and (46) of the VCPA and Virginia Code § 54.1-1115(B)(i), pursuant to Virginia Code § 59.1-206(A);

D. Grant judgment against Whitfield and award to the Commonwealth its costs, reasonable expenses incurred in investigating and preparing the case up to \$1,000 per violation of § 59.1-200(A)(2), (5), (8), (14), 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

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

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

By: 
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CERTIFICATE OF SERVICE

I, Stephen John Sovinsky, certify that on May 8, 2018, a true copy of the foregoing Complaint was mailed via first class mail to Gerald Lee Whitfield at 202 Woods Edge Court, Chesapeake, Virginia 23323-3917.


Stephen John Sovinsky