

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. CV19-3500

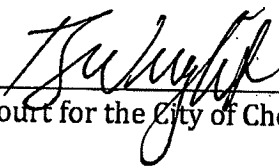
ORDER APPROVING AND ADOPTING ASSURANCE OF VOLUNTARY COMPLIANCE

Upon review of the Complaint and the Assurance of Voluntary Compliance (the "Assurance") entered into between Plaintiff Commonwealth of Virginia, *ex rel.* Mark R. Herring, Attorney General and Gerald Lee Whitfield, individually and doing business as Whitfield's Home Improvements, and with the consent of the parties, it is hereby ADJUDGED, ORDERED, and DECREED that:

1. The attached Assurance is hereby approved and adopted as an Order of this Court;
2. The Clerk of this Court shall mail a certified copy of this Order to Stephen John Sovinsky, Assistant Attorney General, Consumer Protection Section, 202 North 9th Street, Richmond, Virginia 23219, and to Gerald Lee Whitfield, 202 Woods Edge Court, Chesapeake, Virginia 23323; and
3. This Order and the attached Assurance with judgments contained in Paragraphs 4.0, 5.0, and 6.0 shall be recorded on the Clerk's judgment docket.

Enter:

5/19/18



Judge, Circuit Court for the City of Chesapeake

WE ASK FOR THIS:

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

By:

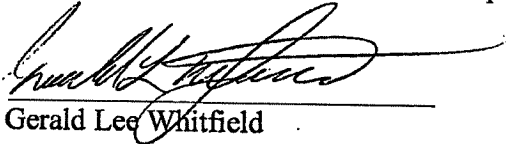


Stephen J. Sovinsky (VSB No. 85637)
Assistant Attorney General
Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219
Phone: (804) 823-6341
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Counsel for Commonwealth of Virginia, ex rel. Mark R. Herring, Attorney General

GERALD LEE WHITFIELD,
individually, and d/b/a Whitfield's Home Improvements

By:



Gerald Lee Whitfield

CERTIFIED TO BE A TRUE COPY
OF THE RECORD IN MY CUSTODY
ALAN P. KRASNOFF, CLERK
CIRCUIT COURT, CHESAPEAKE, VA
BY: 
DEPUTY CLERK

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

FILED IN CLERK'S OFFICE
2018 MAY -9 PM 3:01
CHESAPEAKE CIRCUIT COURT
BY [Signature] D.C. 2580

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. 18-018

ASSURANCE OF VOLUNTARY COMPLIANCE

I. PARTIES

1.0 This Assurance of Voluntary Compliance ("Assurance") is entered into by the Commonwealth of Virginia, by, through and at the relation of its Attorney General, Mark R. Herring (the "Attorney General" or the "Commonwealth"), and Gerald Lee Whitfield, individually and doing business as a sole proprietorship under the name of Whitfield's Home Improvements ("Whitfield").

1.1 Gerald Lee Whitfield is an individual who conducts business as a sole proprietorship under the name of Whitfield's Home Improvements. Whitfield currently resides at 202 Woods Edge Court, Chesapeake, Virginia 23323. Whitfield's Home Improvements is not incorporated or otherwise registered with the Virginia State Corporation Commission.

1.2 By undertaking for money to bid upon, accepting, and offering to accept a contract for the construction, removal, repair, and improvement in a consumer's home, Whitfield is a "contractor," as defined in Virginia Code § 54.1-1100, requiring a Virginia contractor's license.

under Virginia Code § 54.1-1103. Neither Gerald Lee Whitfield nor Whitfield's Home Improvements is licensed as a contractor by the Virginia Department of Professional and Occupational Regulation Board for Contractors.

1.3 By advertising, selling, and offering for sale services as a contractor to consumers residing in Virginia, Whitfield was at all relevant times mentioned herein, a "supplier" of "goods" or "services," and engaged in "consumer transactions," as those terms are defined in § 59.1-198 of the Virginia Consumer Protection Act ("VCPA"), Virginia Code §§ 59.1-196 through 59.1-207:

1.4 Whitfield does not contest that he has advertised to and served a Virginia consumer in the City of Chesapeake. Whitfield consents to and waives all objections to this Court's jurisdiction for all matters relating to this Assurance's entry, execution, monitoring, and enforcement. Whitfield further waives all objections he may have to venue in this Court for all matters relating to this Assurance's entry, execution, monitoring, and enforcement.

II. GENERAL PROVISIONS

2.0 This Assurance is made without trial or adjudication of any issue of fact or law. This Assurance does not constitute evidence or admission of any issues of fact or law. Whitfield enters into this Assurance for the purpose of arriving at a complete, full settlement of any disagreement as to the matters addressed in this Assurance and preceding its execution, which may exist between Whitfield and the Attorney General, thereby avoiding unnecessary delay and expense.

2.1 This Assurance shall be governed by the laws of the Commonwealth of Virginia.

2.2 This Assurance does not constitute an approval by the Attorney General of any of Whitfield's services or practices and Whitfield shall not make any representation to the contrary.

2.3 Nothing in this Assurance shall be construed as a waiver of whatever, if any, private

rights of action any affected person may have relating to the conduct at issue.

2.4 Nothing in this Assurance shall permit any person or entity not a signatory hereto to enforce any provision of this Assurance.

2.5 Nothing in this Assurance shall be construed to authorize or require any action by Whitfield in violation of applicable federal, state, or other laws.

2.6 Whitfield agrees that this Assurance constitutes a legally-enforceable obligation of Whitfield in accordance with its terms.

2.7 With the exception of this action, the Commonwealth shall not institute any civil proceeding or take any civil action against Whitfield under Virginia Code § 54.1-1115(B)(i) or the VCPA for any conduct that occurred prior to the date this Assurance is signed by all parties and approved and adopted as an Order of the Court (the "Effective Date" of this Assurance) that is based on any service or practice addressed in this Assurance. The Parties agree that if Whitfield provided any materially-false information to the Commonwealth during any settlement negotiations between the Parties, including, but not limited to, the certification made in Paragraph 3.6, this release shall be null and void.

2.8 This Assurance applies to Gerald Lee Whitfield and Whitfield's Home Improvements, together with any employees or agents of the business who engage in any aspect of Whitfield's contractor activities.

2.9 This Assurance constitutes the entire agreement of the parties hereto and supersedes all prior agreements or understandings, whether written or oral, between the parties and/or their respective counsel with respect to the subject matter hereof. Any amendment or modification to this Assurance must be in writing and signed by a duly authorized representative of all the parties hereto and approved by the Court.

III. ASSURANCES

3.0 Whitfield voluntarily agrees to this Assurance of Voluntary Compliance without trial or adjudication of any issue of fact or law.

3.1 Whitfield agrees to refrain from and to be permanently enjoined from violating Virginia Code § 54.1-1115(B)(i) and § 59.1-200(A)(2), (5), (8), (14), and (46) of the VCPA, including by making any misrepresentations regarding contractor services advertised, offered, and sold, and undertaking work without a valid Virginia contractor's license. Whitfield further agrees that engaging in such acts or similar acts after the Effective Date of this Assurance may constitute, dependent upon the facts and circumstances to be later determined, a violation of the Order by which this Assurance is approved and adopted by this Court.

3.2 Whitfield agrees to refrain from and to be permanently enjoined from engaging in any and all practices in violation of Virginia Code § 54.1-1115(B)(i) or the VCPA, as they now exist, or as amended in the future.

3.3 Whitfield agrees to make available and to disclose the provisions of this Assurance to any employees, agents, and representatives of Whitfield's Home Improvements within five (5) business days of the Effective Date of this Assurance.

3.4 Whitfield agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, limited liability company, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms of this Assurance, but is permitted to do any of the aforementioned for tax or legitimate corporate reasons.

3.5 Whitfield agrees that he shall not represent that the Attorney General approves of or endorses his past or future business practices, or that the execution of this Assurance constitutes such approval or endorsement.

3.6 Whitfield certifies that he has undertaken no other work in his name or as Whitfield's Home Improvements that would require a Class A, B, or C contractor's license pursuant to Virginia Code §§ 54.1-1100 and 54.1-1103.

IV. RESTITUTION

4.0 The Commonwealth, as trustee, shall have judgment against and recover from, and judgment is hereby entered against, Whitfield in the amount of Four Thousand Three Hundred and Ninety-Eight Dollars (\$4,398), with interest from the Effective Date at the judgment rate of six percent (6%) per annum, for the use and benefit of, and restitution to Jeffrey P. Deal Sr., who paid monies to Whitfield for contractor services which were not provided.

V. CIVIL PENALTIES

5.0 The Commonwealth shall have judgment against and recover from, and judgment is hereby entered against, Whitfield in the amount of Two Thousand Dollars (\$2,000) for civil penalties, with interest from the Effective Date at the judgment rate of six percent (6%) per annum. Any amounts paid and collected pursuant to Section V shall be deposited to the Attorney General's Regulatory, Consumer Advocacy, Litigation and Enforcement Revolving Trust Fund.

VI. ATTORNEYS' FEES

6.0 The Commonwealth shall have judgment against and recover from, and judgment is hereby entered against, Whitfield in the amount of Five Hundred Dollars (\$500) for reasonable expenses, costs and attorneys' fees in investigating and preparing this action with interest from the Effective Date at the judgment rate of six percent (6%) per annum. Any amounts paid and collected pursuant to Section VI shall be deposited to the Attorney General's Regulatory, Consumer Advocacy, Litigation and Enforcement Revolving Trust Fund.

VII. PAYMENT PLAN

7.0 Whitfield agrees to make payment of the total Six Thousand Eight Hundred and Ninety-Eight Dollars (\$6,898) referenced in Paragraphs 4.0, 5.0, and 6.0 above in the following manner:

a. Simultaneously with the execution of this Assurance, Whitfield agrees to deliver to the Commonwealth a certified or cashier's check, in the amount of Three Hundred Dollars (\$300), made payable to "Treasurer of Virginia," and remitted to: Stephen John Sovinsky, Assistant Attorney General, Consumer Protection Section, 202 North Ninth Street, Richmond, Virginia 23219.

b. On the first of each month beginning with the first day of June 2018, Whitfield agrees to deliver to the Commonwealth a certified or cashier's check, in the amount of Three Hundred Dollars (\$300), made payable to "Treasurer of Virginia," and remitted to: Stephen John Sovinsky, Assistant Attorney General, Consumer Protection Section, 202 North Ninth Street, Richmond, Virginia 23219. Such payments shall continue until all judgments herein are satisfied, including any outstanding interest due. Any monies received in addition to, or separate from, these payments, which satisfy the judgments in part, shall not alter or reduce the obligations to make subsequent payments in full as required by this subparagraph.

c. The Commonwealth agrees to refrain from filing any in-court collections proceedings to enforce the judgments in Paragraphs 4.0, 5.0, and 6.0, including garnishment proceedings. Failure by Whitfield to make any of the payments described in this paragraph shall constitute a breach of this Assurance, shall constitute a violation of the Order by which this Assurance is approved and adopted by this Court, and shall entitle the Commonwealth to all legally-available actions to enforce the Order and Assurance, including collections proceedings.

d. If Whitfield does not make any individual payment in the time and manner as required by Paragraph 7.0, the entire amount of the judgments in Paragraphs 4.0, 5.0; and 6.0 shall be due

and immediately owing from Whitfield to the Commonwealth including any accrued interest. In such event, the Commonwealth may exercise all rights and remedies available to it as a judgment creditor.


VIII. SIGNATURES

8.0 Each undersigned individual represents that he is fully authorized by the Party he represents to enter into this Assurance and to legally bind such Party to the terms and conditions herein.

Signed this 8th day of May, 2018.

FOR THE PLAINTIFF:

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

By: 
Stephen J. Sovinsky (VSB No. 85637)
Assistant Attorney General
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Counsel for Commonwealth of Virginia, ex rel. Mark R. Herring, Attorney General

FOR THE DEFENDANT:

GERALD LEE WHITFIELD,
individually, and d/b/a Whitfield's Home Improvements

By: 
Gerald Lee Whitfield