STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
JEFFERSON COUNTY, ILLINOIS

FILED
SECOND JUDICIAL COURT
AUG 25 2010
CLERK OF CIRCUIT COURT
JEFFERSON COUNTY ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff,

-vs-

NO. 2010-CH- 82

BRAD PETERS,
d/b/a CUSTOM DESIGN CONTRACTING,

Defendant.

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

NOW COMES the Plaintiff, THE PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and brings this action complaining that BRAD PETERS d/b/a CUSTOM DESIGN CONTRACTING (Defendant or PETERS) violated the Home Repair and Remodeling Act and the Consumer Fraud and Deceptive Business Practices Act.

PUBLIC INTEREST

1. The State of Illinois and its citizens are and will be adversely impacted by Defendant's unfair and deceptive practices as alleged in this Complaint. Therefore, pursuant to 815 ILCS 505/7(a), the Illinois Attorney General brings this action in the public interest of the citizens of the State of Illinois.

JURISDICTION AND VENUE

2. This action is brought for and on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, ATTORNEY GENERAL OF THE STATE OF ILLINOIS, pursuant to the provisions of the Consumer Fraud and Deceptive Business Practices Act ("Consumer Fraud

Act"), 815 ILCS 505/1 *et seq.*, the Home Repair and Remodeling Act ("Home Repair Act"), 815 ILCS 513/1 *et seq.*, and her common law authority as Attorney General to represent the People of the State of Illinois.

3. Venue for this action properly lies in Jefferson County, Illinois, pursuant to Section 2-101 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-101, in that the acts and transactions complained of herein occurred in Jefferson County, Illinois.

PARTIES

3. Plaintiff, THE PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, the Attorney General of the State of Illinois is charged with the enforcement of the Consumer Fraud Act and the Home Repair Act.

4. Defendant resides in Irvington, Illinois and operates a home repair and remodeling company from Washington County, Illinois.

5. For purposes of this Complaint for Injunctive and Other Relief, any references to the acts and practices of Defendant shall mean that such acts and practices are by and through the acts of PETERS and his employees, salespersons, representatives and/or other agents.

TRADE AND COMMERCE

6. Subsection 1(f) of the Consumer Fraud Act defines "trade" and "commerce" as follows:

> The terms 'trade' and 'commerce' mean the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this State.

7. The Defendant was at all times relevant hereto, engaged in trade and commerce in the State of Illinois by advertising, offering for sale and selling home repair goods and services to consumers in Illinois.

DEFENDANT'S UNFAIR AND DECEPTIVE BUSINESS PRACTICES

8. Since at least 2001, PETERS has done business and continues to do business in the State of Illinois under the name Custom Design Contracting, including advertising, offering for sale, selling home repair goods and services, and accepting payments for the same from consumers.

9. Custom Design Contracting is not a corporation or LLC.

10. Custom Design Contracting is not registered as an assumed business name in Jefferson County.

11. PETERS entered into contracts for home repair services and goods with Illinois consumers and prior to entering those contracts promised those consumers that he would provide the services by a certain date, but did not keep those promises.

12. PETERS solicited and took both cash and check down payments and additional payments from consumers for home repair and remodeling services to be provided.

13. PETERS entered into contracts for home repair services and goods with Illinois consumers and prior to entering those contracts promised those consumers that he would provide certain goods necessary to complete the job, but did not keep those promises.

14. PETERS entered into contracts for home repair services and goods with Illinois consumers and prior to entering those contracts promised those consumers that he would order and pay for certain goods necessary to complete the job, but did not keep those promises.

15. PETERS entered into contracts for home repair services and goods in excess of $1000 with Illinois consumers and yet prior to entering those contracts failed to provide the consumers with an itemized estimate of the particular costs for the project.

16. PETERS entered into contracts for home repair services and goods in excess of $1000 with Illinois consumers and yet prior to entering those contracts failed to provide the consumers with "Home Repair: Know Your Consumer Rights" pamphlets.

17. PETERS entered into contracts for home repair services and goods in excess of $1000 with Illinois consumers and yet prior to entering those contracts failed to obtain a signed copy of an acknowledgement that the homeowner received a copy of the "Home Repair: Know Your Consumer Rights" pamphlet.

18. Illinois law requires that individuals or companies engaged in supplying roofing services must possess a valid Illinois roofing contractor's license.

19. PETERS entered into contracts to provide roofing services for Illinois consumers when he did not possess a valid Illinois roofing license.

20. Despite promising to have work completed by a certain date, PETERS failed to complete projects in a timely manner.

21. Despite promising to order materials needed to complete contracts for Illinois consumers, and despite telling consumers that those materials were on order, PETERS did not place orders for those needed materials.

22. Repeatedly, following failures to complete a project by promised dates, PETERS promised consumers new dates of completion and then failed to fulfill those promises.

23. PETERS, after failing to commence or complete projects for Illinois consumers, then failed to return down payments and all additional payments after having received a

correspondence sent by certified mail from the consumer's legal representative requesting the return of those monies.

24. To date, three consumers filed complaints against Defendant with the Office of the Illinois Attorney General. Within the past 36 months, one consumer filed a complaint against Defendant with the Better Business Bureau.

APPLICABLE STATUTES

25. Section 2 of the Consumer Fraud Act provides:

> Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

26. Section 2Q(a) of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/2 et seq. (WESTLAW 2009)) provides in pertinent part:

> Sec. 2Q. (a) No person, firm, corporation, partnership or association engaged in the business of making home improvements or repairs shall operate a business under a name other than the real names of the individuals conducting the business, an assumed corporate name under the Business Corporation Act of 1983 or an assumed business name under the Assumed Business Name Act or under the real names, assumed corporate, or assumed business names of an entity for whom the person, firm, corporation, partnership or association operates as a subcontractor, licensee or independent contractor. Any person who knowingly violates this Section commits an unlawful practice within the meaning of this Act, and in addition to the relief available under Section 7 of this Act, may be prosecuted for the commission of a Class A misdemeanor. A person who is convicted of a second or subsequent violation of this Section is guilty of a Class 4 felony.

27. Section 2Q(c) of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/2 et seq. (WESTLAW 2009)) provides in pertinent part:

> Section 2Q (c) A person engaged in the business of home repair, as defined in Section 2(a)(1) of the Home Repair Fraud Act, who fails or refuses to commence or complete work under a contract or an agreement for home repair, shall return the down payment and any additional payments made by the consumer within 10 days after a written demand sent to him by certified mail by the consumer or the consumer's legal representative or by a law enforcement or consumer agency acting on behalf of the consumer.

28. Solely for the purpose of defining Defendant's act as home repair under Section 2 Q(c) of the Consumer Fraud Act, Section 2(a)(1) of the Home Repair Fraud Act defines "home repair" as:

> 2(a) "Home Repair" means the fixing, replacing, altering, converting, modernizing, improving of or the making of an addition to any real property primarily designed or used as a residence. (1) Home repair shall include the construction, installation, replacement or improvement of driveways, swimming pools, porches, kitchens, chimneys, chimney liners, garages, fences, fallout shelters, central air conditioning, central heating, boilers, furnaces, hot water heaters, electrical wiring, sewers, plumbing fixtures, storm doors, storm windows, awnings and other improvements to structures within the residence or upon the land adjacent thereto.

29. Section 20 of the Home Repair and Remodeling Act (815 ILCS 513/20 (WESTLAW 2009)) provides in pertinent part:

Sec. 20. Consumer rights brochure.

> (a) For any contract over $1,000, any person engaging in the business of home repair and remodeling shall provide to its customers a copy of the "Home Repair: Know Your Consumer Rights" pamphlet prior to the execution of any home repair and remodeling contract. The consumer shall sign and date an acknowledgment form entitled "Consumer Rights Acknowledgment Form" that states: "I, the homeowner, have received from the contractor a copy of the pamphlet entitled "Home Repair: Know Your Consumer Rights.'" The contractor or his or her representative shall also sign and date the acknowledgment form, which includes the name and

address of the home repair and remodeling business. The acknowledgment form shall be in duplicate and incorporated into the pamphlet. The original acknowledgment form shall be retained by the contractor and the duplicate copy shall be retained within the pamphlet by the consumer.

(b) For any contract for $1,000 or under, any person engaging in the business of home repair and remodeling shall provide to its customers a copy of the "Home Repair: Know Your Consumer Rights" pamphlet. No written acknowledgment of receipt of the pamphlet is required for a contract of $1,000 or under.

(c) The pamphlet must be a separate document, in at least 12 point type, and in legible ink. The pamphlet shall read as follows:

HOME REPAIR: KNOW YOUR CONSUMER RIGHTS

As you plan for your home repair/improvement project, it is important to ask the right questions in order to protect your investment. The tips in this fact sheet should allow you to protect yourself and minimize the possibility that a misunderstanding may occur.

AVOIDING HOME REPAIR FRAUD

Please use extreme caution when confronted with the following warning signs of a potential scam:

(1) Door-to-door salespersons with no local connections who offer to do home repair work for substantially less than the market price.

(2) Solicitations for repair work from a company that lists only a telephone number or a post-office box number to contact, particularly if it is an out-of-state company.

(3) Contractors who fail to provide customers references when requested.

(4) Persons offering to inspect your home for free. Do not admit anyone into your home unless he or she can present authentic identification establishing his or her business status. When in doubt, do not hesitate to call the worker's employer to verify his or her identity.

(5) Contractors demanding cash payment for a job or who ask you to make a check payable to a person other than the owner or company name.

(6) Offers from a contractor to drive you to the bank to withdraw funds to pay for the work.

CONTRACTS

(1) Get all estimates in writing.

(2) Do not be induced into signing a contract by high-pressure sales tactics.

(3) Never sign a contract with blank spaces or one you do not fully understand. If you are taking out a loan to finance the work, do not sign the contract before your lender approves the loan.

(4) Remember, you have 3 business days from the time you sign your contract to cancel any contract if the sale is made at your home. The contractor cannot deprive you of this right by initiating work, selling your contract to a lender, or any other tactic.

(5) If the contractor does business under a name other than the contractor's real name, the business must either be incorporated or registered under the Assumed Business Name Act. Check with the Secretary of State to see if the business is incorporated or with the county clerk to see if the business has registered under the Assumed Business Name Act.

(6) Homeowners should check with local and county units of government to determine if permits or inspections are required.

(7) Determine whether the contractor will guarantee his or her work and products.

(8) Determine whether the contractor has the proper insurance.

(9) Do not sign a certificate of completion or make final payment until the work is done to your satisfaction.

(10) Remember, homeowners should know who provides supplies and labor for any work performed on your home. Suppliers and subcontractors have a right to file a lien against your property if the general contractor fails to pay them. To protect your property, request lien waivers from the general contractor.

BASIC TERMS TO BE INCLUDED IN A CONTRACT

(1) Contractor's full name, address, and telephone number. Illinois law requires that persons selling home repair and improvement services provide their customers with notice of any change to their business name or address that comes about prior to the agreed dates for beginning or completing the work.

(2) A description of the work to be performed.

(3) Starting and estimated completion dates.

(4) Total cost of work to be performed.

(5) Schedule and method of payment, including down payment, subsequent payments, and final payment.

(6) A provision stating the grounds for termination of the contract by either party. However, the homeowner must pay the contractor for work completed. If the contractor fails to commence or complete work within the contracted time period, the homeowner may cancel and may be entitled to a refund of any down payment or other payments made towards the work, upon written demand by certified mail.

Homeowners should obtain a copy of the signed contract and keep it in a safe place for reference as needed.

IF YOU THINK YOU HAVE BEEN DEFRAUDED OR YOU HAVE QUESTIONS

If you think you have been defrauded by a contractor or have any questions, please bring it to the attention of your State's Attorney or the Illinois Attorney General's Office.

Attorney General Toll-Free Numbers
Carbondale (800) 243-0607
Springfield (800) 243-0618
Chicago (800) 386-5438.

30. Section 15 of the Home Repair and Remodeling Act (815 ILCS 513/15 (WESTLAW 2009)) provides in pertinent part:

Sec. 15. Written contract; costs enumerated.
Prior to initiating home repair or remodeling work for over $1000.00, a person engaged in the business of home repair or remodeling shall furnish to the customer for signature a written contract or work order that states the total cost, including parts and materials listed with reasonable particularity and any charge for an estimate.

31. Section 9 of the Illinois Roofing Industry Licensing Act (225 ILCS 335/9 (WESTLAW 2009)) provides in pertinent part:

Sec. 9 Licensure requirement.

(1) It is unlawful for any person to engage in the business or act in the capacity of or hold himself or herself out in any manner as a roofing

contractor without having been duly licensed under the provisions of this Act.
(2) No work involving the construction, reconstruction, alteration, maintenance or repair of any kind of roofing or waterproofing may be done except by a roofing contractor licensed under this Act.
(3) Sellers of roofing services may subcontract the provision of those roofing services only to roofing contractors licensed under this Act.

VIOLATIONS
COUNT I
CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT

32. The Defendant engaged in a course of trade or commerce which constitutes unfair and/or deceptive acts or practices declared unlawful under Section 2 of the Consumer Fraud Act, 815 ILCS 505/2, by:

i. representing to consumers that he would provide goods and services by a certain date but failing to do so;

ii. representing that he would complete projects by a date certain but failing to do so;

iii. representing that he was able to provide roofing services in the state of Illinois but did not have a valid roofing license as required by Illinois law; and

iv. representing that he would order and pay for certain goods necessary to complete the job but failed to do so.

33. The Defendant engaged in a course of trade or commerce which constitutes unfair and/or deceptive acts or practices declared unlawful under Section 2Q of the Consumer Fraud Act, 815 ILCS 505/2Q, by

i. doing business under the name Custom Design Contractors, when in fact, Custom Design Contractors is neither a recognized legal entity nor has it been registered as an assumed business name in Jefferson County Illinois; and

ii. after failing to commence or complete projects for Illinois consumers, then failed to return down payments and all additional payments after having received a correspondence sent by certified mail from the consumer's legal representative requesting the return of those monies.

REMEDIES

34. Section 7 of the Consumer Fraud Act, 815 ILCS 505/7, provides:

> (a) Whenever the Attorney General has reason to believe that any person is using, has used, or is about to use any method, act or practice declared by the Act to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the State against such person to restrain by preliminary or permanent injunction the use of such method, act or practice. The Court, in its discretion, may exercise all powers necessary, including but not limited to: injunction, revocation, forfeiture or suspension of any license, charter, franchise, certificate or other evidence of authority of any person to do business in this State; appointment of a receiver; dissolution of domestic corporations or association suspension or termination of the right of foreign corporations or associations to do business in this State; and restitution.
>
> (b) In addition to the remedies provided herein, the Attorney General may request and this Court may impose a civil penalty in a sum not to exceed $50,000 against any person found by the Court to have engaged in any method, act or practice declared unlawful under this Act. In the event the court finds the method, act or practice to have been entered into with intent to defraud, the court has the authority to impose a civil penalty in a sum not to exceed $50,000 per violation.
>
> (c) In addition to any other civil penalty provided in this Section, if a person is found by the court to have engaged in any method, act, or practice declared unlawful under this Act, and the violation was committed against a person 65 years of age or older, the court may impose an additional civil penalty not to exceed $10,000 for each violation.

35. Section 10 of the Consumer Fraud Act, 815 ILCS 505/10, provides that "[i]n any action brought under the provisions of this Act, the Attorney General is entitled to recover costs for the use of this State."

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that this Honorable Court enter an Order:

A. Finding that the Defendant has violated Section 2 of the Consumer Fraud Act by, but not limited to, engaging in the unlawful acts and practices alleged herein;

B. Preliminarily and permanently enjoining the Defendant from engaging in the business of home repair and remodeling in the State of Illinois;

C. Declaring that all contracts entered into between the Defendant and Illinois consumers by the use of methods and practices are unlawful and rescinded and requiring that full restitution be made to said consumers;

D. Assessing a civil penalty of $50,000 if the Court finds the Defendant has engaged in methods, acts or practices declared unlawful by the Act without the intent to defraud, if the Court finds Defendant has engaged in methods, acts or practices declared unlawful by the Act with the intent to defraud, then assessing a statutory civil penalty of $50,000, all as provided in Section 7 of the Consumer Fraud Act, 815 ILCS 505/7;

E. Assessing an additional civil penalty in the amount of $10,000 per violation of the Consumer Fraud Act found by the Court to have been committed by the Defendant against a person 65 years of age and older as provided in Section 7(c) of the Consumer Fraud Act, 815 ILCS 505/7(c);

F. Requiring the Defendant to pay all costs for the prosecution and investigation of this action, as provided by Section 10 of the Consumer Fraud Act, 815 ILCS 505/10; and

G. Providing such other and further equitable relief as justice and equity may require.

COUNT II
HOME REPAIR AND REMODELING ACT

36. The People reallege and incorporate by reference the allegations in Paragraphs 1 to 24

37. The Defendant engaged in a course of trade or commerce which constitutes acts or practices declared unlawful under Section 15 of the Home Repair and Remodeling Act by entering into contracts for home repair services in excess of $1000, yet failing to provide the consumers with an itemized estimate of the particular costs for the project prior to entering those contracts.

38. The Defendant engaged in a course of trade or commerce which constitutes unfair and/or deceptive acts or practices declared unlawful under Section 20 of the Home Repair and Remodeling Act by:

> i. failing to provide consumers with "Home Repair: Know Your Consumer Rights" brochures prior to entering into contracts for home repair services and goods in excess of $1000; and
>
> ii. failing to obtain from the consumer, a copy of the acknowledgement form demonstrating that Defendant provided and the consumer received a copy of the "Home Repair: Know Your Consumer Rights" brochure.

REMEDIES

39. Section 35 of the Home Repair and Remodeling Act (815 ILCS 513/35 (WESTLAW 2009)) states, in pertinent part:

> (b) All remedies, penalties, and authority granted to the Attorney General or the State's Attorney of any county in this State by the Consumer Fraud and Deceptive Business Practices Act shall be available to him or her for enforcement of this Act, and any violation of this Act shall

constitute a violation of the Consumer Fraud and Deceptive Business Practices Act.

40. Section 7 of the Consumer Fraud Act, 815 ILCS 505/7, provides:

> (a) Whenever the Attorney General has reason to believe that any person is using, has used, or is about to use any method, act or practice declared by the Act to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the State against such person to restrain by preliminary or permanent injunction the use of such method, act or practice. The Court, in its discretion, may exercise all powers necessary, including but not limited to: injunction, revocation, forfeiture or suspension of any license, charter, franchise, certificate or other evidence of authority of any person to do business in this State; appointment of a receiver; dissolution of domestic corporations or association suspension or termination of the right of foreign corporations or associations to do business in this State; and restitution.
>
> (b) In addition to the remedies provided herein, the Attorney General may request and this Court may impose a civil penalty in a sum not to exceed $50,000 against any person found by the Court to have engaged in any method, act or practice declared unlawful under this Act. In the event the court finds the method, act or practice to have been entered into with intent to defraud, the court has the authority to impose a civil penalty in a sum not to exceed $50,000 per violation.
>
> (c) In addition to any other civil penalty provided in this Section, if a person is found by the court to have engaged in any method, act, or practice declared unlawful under this Act, and the violation was committed against a person 65 years of age or older, the court may impose an additional civil penalty not to exceed $10,000 for each violation.

41. Section 10 of the Consumer Fraud Act, 815 ILCS 505/10, provides that "[i]n any action brought under the provisions of this Act, the Attorney General is entitled to recover costs for the use of this State."

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that this Honorable Court enter an Order:

A. Finding that the Defendant has violated Sections 15 and 20 of the Home Repair and Remodeling Act by, but not limited to, engaging in the unlawful acts and practices alleged herein;

B. Preliminarily and permanently enjoining the Defendant from engaging in the business of home repair and remodeling in the State of Illinois;

C. Declaring that all contracts entered into between the Defendant and Illinois consumers by the use of methods and practices are unlawful and rescinded and requiring that full restitution be made to said consumers;

D. Pursuant to Section 35 of the Home Repair and Remodeling Act, assessing a civil penalty of $50,000 if the Court finds the Defendant has engaged in methods, acts or practices declared unlawful by the Act without the intent to defraud, if the Court finds Defendant has engaged in methods, acts or practices declared unlawful by the Act with the intent to defraud, then assessing a statutory civil penalty of $50,000, all as provided in Section 7 of the Consumer Fraud Act, 815 ILCS 505/7;

E. Assessing an additional civil penalty in the amount of $10,000 per violation of the Consumer Fraud Act found by the Court to have been committed by the Defendant against a person 65 years of age and older as provided in Section 7(c) of the Consumer Fraud Act, 815 ILCS 505/7(c);

F. Requiring the Defendant to pay all costs for the prosecution and investigation of this action, as provided by Section 10 of the Consumer Fraud Act, 815 ILCS 505/10; and

G. Providing such other and further equitable relief as justice and equity may require.

Respectfully submitted this 25th day of August, 2010.

THE PEOPLE OF THE STATE OF ILLINOIS
By: LISA MADIGAN, ATTORNEY GENERAL

BY: ELIZABETH BLACKSTON Bureau Chief,
Consumer Fraud Bureau, Springfield Division

BY: _____
JEFFREY M. FELTMAN
Assistant Attorney General

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