

CONSUMER PROTECTION DIVISION *
OFFICE OF THE ATTORNEY GENERAL *
STATE OF MARYLAND *

IN THE *
CONSUMER PROTECTION *
~~DIVISION~~

Proponent,

DIVISION

v.

OFFICE OF THE

ATCL-MD, INC. *
T/A AROUND THE CLOCK *
LOCKSMITH, *

ATTORNEY GENERAL

and

OAH Case Nos. OAG-CPD- *
04-10-12113 and OAG-CPD- *
01-10-12108 *

JOSEPH M. HORTON *

CPD Case No. 10-013-184207

Respondents. *

* * * * *

FINAL ORDER

The Consumer Protection Division (the "Agency")¹ hereby orders Respondents ATCL-MD, Inc., T/A Around the Clock Locksmith ("ATCL") and Joseph M. Horton ("Horton") (collectively "Respondents") to cease and desist from violating the Consumer Protection Act and to take affirmative action pursuant to § 13-403(b)(1) of the Consumer Protection Act as described herein.

¹ The Consumer Protection Division acting in its capacity as a quasi-judicial agency is referred to herein as the "Agency," while the Consumer Protection Division acting as the Proponent in the instant matter is referred to as "Proponent."

Procedural Background

1. In 2010, Proponent initiated an investigation of Respondents for possible violations of the Maryland Consumer Protection Act, Md. Code Ann., Com. Law § 13-101, *et seq.* (2005 Repl. Vol. and 2010 Supp.) in connection with their offer and sale of locksmith goods and services to consumers.

2. On the basis of the Statement of Charges and Petition for Entry of *Ex Parte* Cease and Desist Order filed by the Division, the Agency found that there were reasonable grounds to believe that Respondents had violated and may continue to violate the Consumer Protection Act. The Agency issued an *Ex Parte* Cease and Desist Order on April 6, 2010, requiring Respondents to cease and desist from violating the Consumer Protection Act and to take certain other affirmative action pursuant to § 13-403(b)(1) of the Consumer Protection Act. This Final Order shall replace the *Ex Parte* Cease and Desist Order.

3. This matter was referred to the Office of Administrative Hearings for a hearing to commence on June 28, 2010, with a delegation of authority to make proposed findings of fact and proposed conclusions of law.

4. On April 26, 2010, after Respondents requested a hearing on the Statement of Charges and the *Ex Parte* Order, the Office of Administrative Hearings rescheduled the hearing to begin on May 7, 2010 and continue on May 21 and 26 and June 1, 3, and 9, 2010.

5. Administrative Law Judge Kimberly Farrell (the "ALJ") of the Office of Administrative Hearings heard testimony from 26 witnesses called by Proponent, including Mr. Horton, and nine witnesses called by Respondents, including Mr. Horton. She also admitted into evidence exhibits offered by the parties.

6. On October 19, 2010, Administrative Law Judge Farrell issued her Proposed Findings of Fact and Conclusions of Law, containing a Statement of the Case, Issues, Summary of the Evidence, Proposed Findings of Fact, Discussion and Proposed Conclusions of Law. The ALJ concluded that Respondents committed unfair and deceptive trade practices as defined in §§ 13-301(1), (2) and (3), in violation of § 13-303 of the Consumer Protection Act.

7. The ALJ further concluded that Respondents are likely to continue to violate the Act by continuing to commit unfair and deceptive trade practices.

Application

8. This order applies to Respondent ATCL, its affiliates and any other fictitious entity or DBA used by ATCL, and/or its officers, employees, agents, successors, assignees, affiliates, merged or acquired entities, parent of controlling entities, wholly owned subsidiaries and all other persons acting in concert or in participation with ATCL.

9. This order also applies to Respondent Horton and his agents, employees and assigns, in connection with any partnership, corporation or entity

that Horton currently, or in the future, owns, controls or for which he establishes policy, or has the authority to establish policy, with respect to the subject matter of this Final Order.

Cease and Desist Provisions

10. Respondents shall cease and desist from engaging in any unfair or deceptive trade practices in violation of the Maryland Consumer Protection Act.

11. Respondents shall cease and desist from misrepresenting in advertisements, social networking sites or otherwise on the Internet, flyers, store postings or any other fashion their licensing, affiliation or other status, including but not limited to misrepresenting their affiliation with the Better Business Bureau, membership in any trade organization and their connection with other locksmiths.

12. Respondents shall not misrepresent the size of the corporate Respondent, the number of people employed by or affiliated with the corporate Respondent or the number of years of experience held by persons employed by or who perform services for the corporate Respondent.

13. Respondents shall not represent that their prices are competitive unless they can substantiate that their total charges are the same as or similar to those charged by other Maryland locksmiths for the same services.

14. Respondents shall not represent that they are licensed locksmiths unless they are licensed under the Maryland Locksmith Act and are in compliance with all of its requirements.

15. Respondents shall accurately identify themselves by name and position each time they have contact with consumers by telephone and when they arrive at a location to perform any locksmith services.

16. Respondents shall immediately cease and desist from selling or offering to sell locksmith services unless they provide consumers an initial estimate (the "Initial Estimate") at the time they are first contacted by consumers (including providing such an estimate orally if the first contact is over the telephone), quoting the total cost of their services and specifying the particular services they will perform at that cost. In addition, Respondents shall provide consumers a written estimate (the "Written Estimate") before they perform any locksmith services, quoting the total cost of their services and specifying the particular services they will perform at that cost. Both the Initial and Written Estimates shall include the distributor's recommended list price for any hardware sold to consumers if the Respondents separately itemize the hardware. If there is any difference between the Initial Estimate and the Written Estimate, Respondents must explain, orally and in writing, the basis for the change. Respondents shall give a copy of the Written Estimate to consumers and ask the consumers to sign the Written Estimate before performing any locksmith services.

17. Respondents shall cease and desist from offering to sell or selling locksmith services unless they complete the installation, repair, opening or

modification of the lock or locks, and any other services that they said they would perform, for the price in the Written Estimate that they gave to the consumer.

18. Respondents shall not charge consumers supplies fees unless the charges are reasonably related to the cost of supplies used in the transaction.

19. Respondents shall include on each invoice, sales receipt or work order for services:

- a. the quoted cost of the service provided to the consumer prior to agreeing to provide the service;
- b. the total actual cost of the service;
- c. the address where the services were provided;
- d. the type of lock being serviced;
- e. the year, make and model of the vehicle, if applicable;
- f. the vehicle identification number, if applicable; and
- g. the manufacturer's or distributor's list prices of locks, bolts, keys, transformers and other supplies and parts, if those items are separately itemized.

20. Respondents shall include in 12 point type on the front side of any invoice, sales receipt or work order for services they provide consumers in connection with the offer or sale of locksmith services the following statement:

"If you have any questions or complaints concerning locksmith services, you may get in touch with the Maryland Attorney General's Consumer Protection Division at (888) 743-0023, by writing to: Consumer Protection Division, 200 St. Paul Place, 16th Floor, Baltimore, MD 21202, or by visiting the Consumer Protection Division's website at www.oag.state.md.us/consumer."

21. Respondents shall provide consumers with a copy of a sales receipt, invoice or work order that contains the information required under paragraph 19

before collecting any payment for services or charging a consumer's credit or debit card.

22. Respondents shall promptly return to consumers all personal documents after reviewing any documents necessary for identification purposes and shall return consumers' credit or debit cards promptly after the cards are used to charge fees approved by the consumers. Respondents shall promptly return consumers' keys. In the event that there is a dispute concerning their charges for locksmith services provided to consumers, Respondents shall not retain any personal documents, credit cards, debit cards or keys belonging to consumers.

23. Respondents shall not misrepresent the availability of insurance reimbursement.

24. Respondents shall not sign any documents in the name of the consumer or arrange for anyone other than the consumer to sign documents relating to the service provided.

25. If, due to changed circumstances, any of the specific prohibitions or affirmative obligations that are imposed by this Final Order conflict with a newly enacted statute or regulation or become unnecessary, either party may petition the Agency to amend this Order.

Restitution

26. Respondents shall pay in restitution to the Agency the amount of supplies fees that they charged consumers. Within thirty (30) days from the date of

entry of this Final Order, they shall pay the Agency at least \$19,613.77, less any refunds Respondents are able to document that they have made to consumers for supplies fees.

27. Respondents shall also pay in restitution to the Agency the amount of hardware costs they charged consumers to the extent that Respondents' charges exceeded the distributor's list price when Respondents provided a misleading list price. Within thirty (30) days from the date of entry of this Final Order, they shall pay the Agency at least \$12,702.91, less any refunds Respondents are able to document that they have made to consumers for hardware costs.

28. Respondents shall also pay in restitution to the Agency the amount they charged for other services in excess of the amount that Baldino's Lock & Key would have charged for the same services, as documented in Proponent's Exhibit 44, so long as the consumer did not agree to the charges and states that the excess charges for the services are material information. Within thirty (30) days of the date of entry of this Final Order, they shall pay the Agency at least \$100,000.00. Any restitution due for these excess charges for other services may be determined pursuant to a claims process described below.

29. Upon receipt of Respondents' restitution payment, the Agency shall place the payment in an account from which consumers may be paid restitution by the Agency (hereinafter referred to as the "Restitution Account").

30. Within thirty (30) days from the date of entry of this Final Order, Respondents shall provide Proponent a list of all consumers for whom Respondents provided any locksmith services (the "Consumer List"). For each such consumer whose name is contained on the Consumer List, Respondents shall provide the following information in the form of a spreadsheet, with each item below contained in a separate field:

- (i) the consumer's first name;
- (ii) the consumer's last name;
- (iii) the consumer's street address;
- (iv) the city where the consumer resides;
- (v) the state where the consumer resides;
- (vi) the consumer's zip code;
- (vii) an itemized description of the good(s) and service(s) Respondents sold to the consumer and an itemized list of the charges for each good and service;
- (viii) the date of the service;
- (ix) the amount of any monies paid by the consumer to Respondents; and
- (x) any refunds paid by Respondents to consumers.

Respondents shall provide the Consumer List required under this paragraph to Proponent in both electronic and paper form. The electronic document shall be in an Excel or ASCII, tab-delimited format, or another format to which the Proponent agrees.

31. Within thirty (30) days from the date of entry of this Final Order, Respondents shall provide Proponent with a copy of all sales receipts, estimates, credit or debit card slips, copies of checks and other records reflecting any payment that Respondents have received from any consumer.

32. Proponent shall perform a claims process that will be conducted by a person or persons appointed by the Agency (hereinafter the "Claims Administrator"), the purpose of which shall be to locate and pay restitution to consumers who may be eligible to receive restitution under this Final Order. Consumers shall be eligible for restitution under this Final Order if they paid Respondents (i) supplies fees; (ii) hardware costs to the extent that Respondents' charges exceeded the distributor's list price when Respondents provided a misleading list price; and (iii) charges for other services in excess of the charges that Baldino's Lock & Key would have imposed for the services, as documented in Proponent's Exhibit 44, so long as the consumer did not agree to the charges and states that the excess charges are material. The Claims Administrator may be an employee of the Agency or an independent claims processor. Respondents shall be liable for the costs of conducting the claims process.

33. The Restitution Account shall be maintained by the Agency. The Agency shall make disbursements from the Restitution Account to pay restitution to eligible consumers and to pay for the costs of the claims process. If at any stage of the claims process it is determined that the Restitution Account will require additional payments to satisfy all consumer restitution due under this Order, Respondents shall deposit additional money in the amount specified by the Agency within fourteen (14) days of being notified by the Agency of the additional amount.

34. At the conclusion of any claims process conducted by the Agency or the Claims Administrator, or if no claims process is conducted, any part of the

restitution payment made by Respondents that has not been distributed to consumers shall be returned to Respondents.

Bill of Costs

35. Within thirty (30) days of the date of entry of this Final Order, Proponent may file a bill of costs for its time investigating and prosecuting this matter.

Civil Penalties

36. The Administrative Law Judge found that Respondents committed multiple violations of the Consumer Protection Act. In particular, she found that Respondents violated the Act when they charged supplies fees that had no basis and identified what they called list prices for hardware in order to appear lenient when they gave a purported discount from a fictitious list price. Respondents also misrepresented their status, affiliations and connections when they advertised and otherwise claimed that they were licensed, that they represented a team of professionals with a combined experience of 32 years, that they were accredited by the Better Business Bureau, that they were affiliated with a competitor Pop-A-Lock, and that Respondent Horton was not the owner and sole employee of Around the Clock Locksmith. In order to overcome consumers' reluctance to pay Respondents' high charges, Respondents also falsely advised consumers that their insurance carriers would reimburse their charges.

37. The Administrative Law Judge found that Respondents engaged in a "gauntlet of unfair trade practices" in order to coerce consumers into paying their

inflated fees. These practices made it possible for Respondents to charge consumers exorbitant fees, including, but not limited to each of the thirty-three testifying witnesses who were not given accurate estimates of Respondents' charges in advance of the service.

38. Respondents, therefore, committed at least the following 916 violations of the Consumer Protection Act:

- a. at least 675 deceptive charges for supplies fees;
- b. at least 180 misleading hardware list prices;
- c. at least 3 violations for misleading promotional practices in connection with their claims about licensing status, team with 32 years of experience and Better Business Bureau accreditation;
- d. at least 3 violations in connection with their claimed affiliation with their competitor Pop-A-Lock;
- e. at least 6 violations in connection with misrepresenting Respondent Horton's role with Around the Clock Locksmith;
- f. at least 15 violations in connection with their misrepresentations about insurance reimbursement;
- g. at least 33 violations in connection with their practice of coercing consumers to pay exorbitant fees without providing accurate estimates; and
- h. at least 1 violation for deceptively promising 100% satisfaction.

39. The factors to be considered by the Agency pursuant to Md. Code Ann., Com. Law § 13-410 in setting the amount of a civil penalty are:

- (i) The severity of the violation for which the penalty is assessed;
- (ii) The good faith of the violator;
- (iii) Any history of prior violations;
- (iv) Whether the amount of the penalty will achieve the desired deterrent purpose; and
- (v) Whether the issuance of a cease and desist order, including restitution, is insufficient for the protection of consumers.

Each of these factors is considered below.

40. The Agency has adopted the Administrative Law Judge's conclusion that Respondents engaged in a "gauntlet of unfair trade practices [that] caused substantial economic injury to the consumers," that they "manipulated" consumers by failing to give them accurate price information, that they "tricked" consumers into signing estimates given them only after the service was complete, and that they charged consumers hundreds to thousands of dollars more than they would have paid a reasonable high-end price locksmith. Consumers exhibited "reactions of crying, of being speechless, of feeling violated, of feeling sick, [and] of being victimized." As a result, consumers suffered severe financial and emotional injury.

41. Respondents acted in bad faith. Not only did they engage in a gauntlet of unfair trade practices before the Statement of Charges was filed, but they continued their abusive practices even after the *Ex Parte* Order by tricking consumers into signing what later appeared to be called "Estimate." Respondent Horton lied to consumers and to the Administrative Law Judge who found that he was "relentlessly perjurious."

42. Respondents' continued violations of the Consumer Protection Act after the *Ex Parte* Order was entered shows a disregard for the law and intent to extort high prices from consumers, and compels a higher penalty for each violation that Respondents committed.

43. The injunctive provisions of the *Ex Parte* Order failed to deter Respondents from continuing the same course of illegal conduct. A significant penalty is necessary to deter Respondents and those similarly situated from engaging in this or a similar type of illegal conduct in the future.

44. Restitution alone is insufficient to protect consumers. The restitution provisions of this order allow Respondents to retain fair compensation for their services. Therefore, payment of a penalty is necessary to punish Respondents.

45. Section 13-410(a) of the Consumer Protection Act provides that a merchant who engages in a violation of the Act is subject to a fine of not more than \$1,000 for each violation.

46. Following consideration of the number of violations committed by Respondents and the factors set forth in Md. Code Ann., Com. Law, § 13-410(d), the Agency has determined that Respondents should pay a penalty in the amount \$300 per violation for a total of Two Hundred and Seventy-Four Thousand and Eight Hundred Dollars (\$274,800). Accordingly, Respondents shall, no later than thirty (30) days from the date of entry of this Final Order, pay that amount to the State of Maryland.

47. If there are insufficient funds received by the Agency to cover full restitution for consumers and the civil penalty, the funds received shall be credited first toward restitution and shall only be credited toward the civil penalty after all restitution claims are satisfied.

Notice to Respondents

48. Pursuant to Md. Code Ann., Com. Law, § 13-403(b), Respondents are hereby notified that if the Consumer Protection Division determines that Respondents have failed to comply with this Order within thirty (30) days following service of the Order, the Consumer Protection Division may proceed with enforcement of the Order pursuant to Title 13 of the Commercial Law Article.

Appeal Rights

49. A party aggrieved by the Findings of Fact and Conclusions of Law or this Final Order is entitled to judicial review of the decision as provided by §10-222 of the State Government Article of the Annotated Code of Maryland. Generally, a petition for judicial review must be filed within thirty (30) days after the date of the order from which relief is sought. The time for filing a petition is regulated by Rule 7-203 of the Maryland Rules and the rules regulating judicial review of administrative agency decisions as set forth in Rules 7-201 to 7-210 of the Maryland Rules.

CONSUMER PROTECTION DIVISION
OFFICE OF THE ATTORNEY GENERAL

Date: May 9, 2011

By:



Steven M. Sakamoto-Wengel
Consumer Protection Counsel for Regulation,
Legislation and Policy and Chief's Designee