

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

IN THE
CONSUMER PROTECTION

Proponent, *

DIVISION OF THE

v. *

OFFICE OF THE

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

ATTORNEY GENERAL

and *

Case Nos. OAG-CPD-04-10-12113
OAG-CPD-01-10-12108

JOSEPH M. HORTON, *

CPD Case No. 10-013-184207

Respondents. *

* * * * *

**PROPONENT'S OPPOSITION TO RESPONDENTS'
OBJECTIONS TO PROPOSED FINAL ORDER**

Respondents make two objections to the Proponent's proposed final order. Neither objection has merit.

1. The Restitution Requested Is Appropriate.

Administrative Law Judge ("ALJ") Kimberly Farrell's findings support the Proponent's requested restitution. She noted that "[t]here is no doubt that many Maryland consumers were overcharged by the Respondents from a practical standpoint." Proposed Decision at 98. She made specific findings that "Respondent's prices are far higher than his most expensive competitor in most instances" (§15); "Baldino's prices are high-end prices for Maryland, but are charges that consumers are often willing to pay when advised in advance of the cost of service" (§17); Respondent's service "fees are often quite high, even in the hundreds of dollars [and] are not disclosed to consumers if they ask for an estimate in advance of the work being done" (§18); Respondent "did not usually give estimates and when he did they were not accurate or detailed"

(¶505); “Respondent’s charges were consistently higher than even high-end competitors” (p. 65); and “where, as here, there is a failure to disclose fees that are unusual in the industry and exorbitant by any comparison to the next highest priced competitor, it constitutes an omission of a material fact injurious to the consumer” (p. 78). The ALJ specifically rejected Respondents’ argument that “it cannot be a deceptive trade practice under the [Act] to charge a certain price without disclosure of the price in advance of performing the service.” (p. 79) On the contrary, the ALJ concluded that Respondent “failed to give pricing information which was material to consumers and in so doing he deceived or tended to deceive them.” (p. 82)

The ALJ questioned, however, the method of calculating the appropriate amount of restitution proposed in Proponent’s Proposed Findings of Fact and Conclusions of Law, both because some consumers may have agreed in advance to the charges and because the amount that Respondents charged in excess of Baldino’s charges may not be material. (p. 99-100) The Proponent has addressed both these concerns in its proposed final order. Paragraph 30 of the proposed final order provides:

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, so long as the consumer did not agree to the charges and states that the excess charges for the services are material information.

The proposed order provides a very conservative approach to determining the amount of restitution. The proposed claims process identifies those consumers who did not agree in advance to Respondents’ charges and for whom the amount that Respondents charged in excess of Baldino’s charges was material.¹ This proposal is reasonable and very moderate. It permits Respondents to keep payments substantially higher than the fees that Pop-A-Lock (a competitively-priced locksmith) would have charged and similar to fees of Baldino’s, a high-end

¹ Baldino’s Lock & Key price list is incorporated in the record (p. 13, n. 6).

locksmith. Proponent could, instead, have asked for an order requiring Respondents to disgorge *all* their fees in order to remedy their material omissions. Such an approach could easily be justified here, where the ALJ found that Respondents deceived or tended to deceive consumers by failing to provide material information about their charges. All but two of the consumers who testified stated that they would not have used Respondents' services had they known what he would charge. (¶¶ 90, 100, 115, 143, 154, 166, 175, 189, 198, 206, 217, 235, 252, 268, 281, 299, 307, 315, 327, 347, 359, 376, 393, 406, 433, 446, 459, 480, 488, 494) Proponent, however, has asked for a very conservative disgorgement remedy of the excess charges when consumers did not agree to the charges and state that the excess charges are material. Proponent asks the Agency to adopt this approach – an approach that is supported by the ALJ's findings.

2. The Requested Penalties Are Reasonable In Amount And Appropriate.

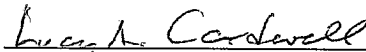
The Proponent seeks a penalty of \$300.00 per violation, an amount which is significantly less than the statutory limit of \$1,000.00. It made this recommendation after reviewing each of the statutory factors that have been routinely applied by the Agency when setting civil penalties. Md. Code Ann., Com. Law § 13-410. The recommended penalties fall well within the statutory authority of the Agency, are supported by the ALJ's factual findings, and are within the Agency's discretion. *See Maryland Aviation Administration v. Noland*, 386 Md. 556 (2005) (court may not overturn sanction that is lawful, authorized, within the discretion of the agency and neither arbitrary nor capricious).

Contrary to Respondents' assertions, this is not a case of first impression. The ALJ found that Respondents engaged in unfair and deceptive trade practices as defined in §§ 13-301(1), 13-301(2) and 13-301(3), by making misleading statements and omitting material facts. There is

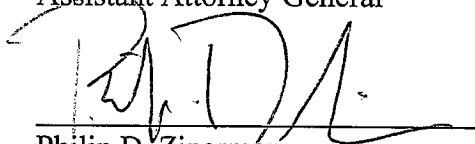
nothing novel about these claims. Certainly, in a case like this where Respondents have continued to violate the Act and an *Ex Parte* Order, Respondents are not entitled to leniency.

For these reasons, Proponent asks that the proposed final order be entered.

Respectfully submitted,



Lucy A. Cardwell
Assistant Attorney General



Philip D. Ziperman
Deputy Chief
200 St. Paul Place, 16th Floor
Baltimore, MD 21202
(410) 576-6337

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of January, 2011, a copy of the foregoing Proponent's Opposition to Respondents' Objections to Proposed Final Order was served, via first class mail and e-mail, on:

George Ritchie
Alicia Wilson
Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC
233 Redwood St.
Baltimore, MD 21202



Lucy A. Cardwell