CONSUMER PROTECTION DIVISION OFFICE OF THE ATTORNEY GENERAL STATE OF MARYLAND	*	IN THE
	*	CONSUMER PROTECTION
Proponent,	*	DIVISION OF THE
v.	*	OFFICE OF THE
ACTL-MD, INC., T/A AROUND THE CLOCK LOCKSMITH,	*	ATTORNEY GENERAL
	*	Case No. OAG-CPD-04-10-12113 OAG-CPD-01-10-12108
and	*	
JOSEPH M. HORTON,	*	CPD Case No. 10-013-184207
Respondents.	*	
	*	

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PROPONENT'S REQUEST FOR ENTRY OF FINAL ORDER

Proponent requests that the Consumer Protection Division (the "Agency"), pursuant to Md. Code Ann., Com. Law § 13-403(b), enter a Final Order in this matter and attaches a proposed Final Order. The Proposed Findings of Fact and Conclusions of Law ("Proposed Decision"), issued on October 19, 2010, by Administrative Law Judge Kimberly A. Farrell (the "ALJ"), concludes that the Respondents, ATCL-MD, Inc. T/A Around the Clock Locksmith and Joseph M. Horton ("Horton"), engaged in unfair and deceptive trade practices that violate § 13-303 of the Consumer Protection Act, as defined by § 13-301(1), § 13-301(2) and § 13-301(3) of the Act, by making false and misleading statements that had the capacity, tendency or effect of deceiving or misleading consumers, by representing that they have a sponsorship, approval, affiliation or connection which they do not have, and by failing to state material facts, the

omission of which deceived or tended to deceive consumers in connection with locksmith goods and services. In addition, the ALJ found that Respondents engaged in unfair trade practices under § 13-303 of the Act with respect to the offer or sale of locksmith goods and services that caused or were likely to cause substantial injury to consumers, when the injury was not reasonably avoidable by the consumers and was not outweighed by any offsetting benefits to consumers or to competition. For the reasons set forth below, Proponent requests that the Agency enter the attached proposed Final Order requiring Respondents to cease and desist violating the Consumer Protection Act and to take affirmative action, including the payment of restitution, costs and civil penalties.

I. THE INJUNCTIVE PROVISIONS OF THE PROPOSED FINAL ORDER ARE REASONABLY RELATED TO THE VIOLATIONS THAT RESPONDENTS HAVE BEEN FOUND TO HAVE COMMITTED.

Section 13-403(b)(1) of the Consumer Protection Act provides that, upon finding a violation, the Agency shall "issue an order requiring the violator to cease and desist from the violation and to take affirmative action, including the restitution of money or property." Section 13-402(b) provides that the order may include restitution, costs, and "any other . . . remedy necessary to correct a violation. . . ." Consistent with this section of the Consumer Protection Act, Proponent has prepared the attached proposed Final Order setting forth the relief that it believes is appropriate to remedy the violations of the Consumer Protection Act that Judge Farrell found.

The injunctive relief requested in the proposed Final Order is reasonably related to the violations that the ALJ found. Injunctive relief is designed to prevent Respondents from

engaging in similar violations in the future and is particularly important in this case because Respondents continued to violate the Consumer Protection Act after the case was filed and an order was entered requiring Respondents to change their practices. Of the ten consumers who testified about locksmith services Respondents provided after the Statement of Charges were filed, none received an accurate estimate of Respondents' charges.

The Agency has the power not only to issue a cease and desist order, but, for example, to impose "affirmative disclosure provisions" in future advertisements, *Consumer Protection Division v. Consumer Publishing,* 304 Md. 731, 772 n. 18 (1984); to require that future notices mailed to consumers explain "in meaningful terms, what would be expected of the recipients should they attempt to claim any prizes [advertised in the notice] and what the likelihood is that they will receive a prize of any significant value," *Outdoor World Corporation,* 91 Md.App. 275, 290 (1992); and generally to take "corrective measures that address the specific violations that are the subject matter of the Division's Final Order" so long as the order does not go beyond the deceptive practices engaged in. *Consumer Protection Division v. George*, 383 Md. 505, 520 (2004).

The ALJ, in her Proposed Decision, discusses at some length Respondents' deceptive as well as unfair trade practices that she found constitute violations of § 13-303 of the Act. She found that Respondents made misrepresentations in their promotional activities that had the capacity, tendency or effect of deceiving consumers. Specifically, Respondents misrepresented their sponsorship, approvals, status and affiliations when they claimed they were licensed but, in fact, were not licensed locksmiths (*See* Proposed Decision, pp. 65-66, 75); when they

represented they were a "team of professionals" with "combined experience of 32 years," but, in fact, Respondent Horton was Respondent ATCL's only employee and had only eight years' experience as a locksmith (*id.* at pp. 63-64); when Respondents continued to represent on their website that Around The Clock Locksmith was accredited with the Better Business Bureau well after that accreditation had been revoked due to the large number of consumer complaints lodged against it (*id.* at pp. 74); and when they claimed they charge competitive rates but, in fact, charged fees "consistently higher than even high-end competitors." (*Id.* at 65).

In addition, the ALJ found that Respondents' promotional activities created confusion concerning whether they were affiliated with a competitor for whom Respondent Horton previously worked. In at least the three transactions with Daniel Jawor, Susan Delawder and Edgar Wayne Snyder, consumers testified that they thought they called Pop-A-Lock, ATCL's competitor, when, instead, they called Respondents.[1] (*Id.* at 30, 45 and 53). The ALJ found that Respondents were aware that misleading information on the Internet linked Pop-A-Lock to Respondents and, rather than cure consumer confusion, Respondent Horton "actively created the impression of an association with Pop-A-Lock . . ." by the way he answered business calls, by his MySpace account name "popalockjoe," and by the design of his van, which used the same color scheme as Pop-A-Lock's. (*Id.* at p. 76). As a result, the ALJ found that Respondents violated the Consumer Protection Act by representing that they had an affiliation with Pop-A-

[1] A business customer, Robert Kestell, also believed he was dealing with Pop-A-Lock. (*Id.* at 23). His transaction was for commercial purposes and was not a consumer transaction pursuant to Md. Code Ann., Com. Law § 13-301(d).

Lock that, in fact, they did not have. (*Id.* at 75-76). It is unlikely that these violations were limited to only the transactions with Mr. Jawor, Ms. Delawder and Mr. Snyder.

Each of these promotional misrepresentations is addressed in the proposed Final Order prohibiting any misrepresentation of Respondents' status with the Better Business Bureau, their affiliation with any other locksmith, their licensing status, their membership in any trade organization, the number of employees and size of the firm, and the competitive nature of Respondents' rates. (Proposed Final Order at ¶¶13-16).

The ALJ also concluded that Respondents' failure to provide estimates, or their offer of deliberately low estimates when an estimate was requested, was unfair and deceptive. (Proposed Decision at 71). Although Respondent Horton admitted that it was "imperative" that consumers be provided estimates of the cost of his services before hiring him and he generally had the ability to give accurate estimates over the phone and always had the ability to give estimates when he arrived at the scene (*id.* at 70-71, 93), he did not give estimates to his customers in most cases or he provided them estimates that were deliberately false because they did not include all of his fees. By denying consumers accurate estimates, Respondents were able to coerce consumers into paying fees that the ALJ found were "consistently higher than even high-end competitors" (*id.* at 65), "outrageous," (*id.* at 91), and "exorbitant by any comparison to the next highest priced competitor (*id.* at 78). Summarizing these tactics, the ALJ found that Respondents kept important and material price information from consumers in order to manipulate them. (*Id.* at 82). The ALJ also found that Respondents' failure to inform consumers of fees that greatly exceeded those of their competitors was an unfair practice. (*Id.* at 96-97).

The ALJ found that Respondents misrepresented the purpose or basis of their fees in order to further mislead consumers into paying grossly excessive fees for their services. For example, the ALJ found that Respondents identified fictional "list prices" for hardware on their sales receipts to create the illusion that consumers received a bargain and that Respondents were "lenient" in their pricing when, in fact, Respondents substantially overcharged for the item. (*Id.* at 71-72). For example, on February 18, 2010, Respondents gave William M. Vogt a Sales Receipt showing a list price of $356.58 for a "SC1, 03 Rim Cylinder" compared with a charge of $262.17. (*See* Sales Receipts, Proponent's Exhibit 49, Receipt No. 1174L). In fact, the distributor's recommended list price for a U.S. Lock rim cylinder was $20.86 and Respondents paid about $8.00. (*See, e.g.,* Proponent's Exhibit 59, p. 27). Similarly, Elizabeth Shin, who submitted an affidavit, paid Respondents $318.73 for a "Schlage double sided deadbolt," that had an alleged list price of $367.70 on Respondents' Sales Receipt. Respondents actually paid about $33.72 for the lock with a recommended list price of $72.70. (*See* Sales Receipts, Proponent's Exhibit 49, Receipt No. 1146L; Proponent's Exhibit 59, p. 44).

Similarly, each consumer who testified at the hearing was charged a "supplies fee" by the Respondent that the ALJ found had "no basis in reality," was "added to each sales receipt to increase Respondent's profit on each call" (Proposed Decision at 72-73), and bore no relation to any supplies actually used in the transaction. (*Id.* at 102).

Consumers who protested or otherwise tried to avoid being overcharged for locksmith services by the Respondents were exposed to what the ALJ labeled a "gauntlet of unfair trade practices" (*id.* at 97). Mr. Horton "routinely and completely unnecessarily grabbed the keys for

the vehicle and kept them on his person," (*id.* at 93); he "did not return [the credit or debit cards] or other personal items to consumers until after they had signed his paperwork" (*id.* at 94); he falsely advised consumers that their insurance policies would cover the cost of Respondents' services (*id.*); he concealed his position with the firm and his responsibility for its prices (*id.* at 95); and he signed or had someone else sign documents approving the charges when the consumer refused to sign (*id.*). The ALJ found that Mr. Horton repeatedly lied to consumers about his position with Around The Clock Locksmith in order to avoid talking to outraged consumers who sought to speak with someone in charge. (*Id.* at 95). When Ms. Eberhard, Ms. Stough, Mr. Jawor, Mr. Collins, Ms. Delawder, and Mr. Snyder tried to reach Respondents to discuss their charges, Respondent Horton falsely denied that he was the owner of the company or that he set the charges. (*Id.*; *see also* Proposed Findings of Fact Nos. 140, 197, 204, 276, 383 and 467). All of these practices caused substantial injury to consumers, prevented consumers from avoiding the injury and provided no benefit to consumers or to competition. (Proposed Decision at 96).

The relief that is proposed in the attached proposed Final Order is reasonably related to the violations found by the ALJ and is calculated to prevent the Respondents from harming consumers going forward. The proposed Final Order requires Respondents to provide the consumer an estimate of their costs over the telephone and to provide a written estimate in person at the location of the services before providing any services. (Proposed Final Order at ¶18). The written estimate must itemize the services to be provided. (*Id.*). If Respondents install any hardware and/or make any keys, they must include in the telephone and written

estimates the manufacturer's or distributor's list price for hardware installed and/or keys made. (*Id.*). If the written estimate differs in any fashion, these differences must be explained by Respondents before they perform any services. (*Id.*) The order also requires Respondents to provide consumers a copy of the written estimate and obtain their signature on the estimate before the service, to perform the itemized services for the estimated price (*id.* and at ¶19) and to provide consumers with a copy of the sales receipt before asking for the consumers' credit or debit cards or otherwise collecting any payment for their services. (*Id.* at ¶23). Respondents may not charge supplies fees unless the charges are reasonably related to the cost of supplies used in the transaction. (*Id.* at ¶20).

The proposed Final Order also contains injunctive relief to prevent Respondents' unfair and deceptive practices found by the ALJ when billing for his service, including requirements that Respondent Horton (i) promptly return consumers' keys, licenses, registration, credit or debit cards and any other personal items (*id.* at ¶24); (ii) identify himself and his position with ATCL (*id.* at ¶17); (iii) 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 (*id.* at ¶26); and (iv) not misrepresent the availability of insurance reimbursement. (*Id.* at ¶25).

These provisions are consistent with the injunctive relief included in the *Ex Parte* Order issued on April 6, 2010. Because Respondents violated the *Ex Parte* Order, however, the injunctive relief is modified to prevent the Respondent from engaging in similar violations in the future.

To the extent that there is any change of circumstances that would justify modifying the

injunctive provisions of the proposed Final Order, Respondents may seek modification of the Order. (*Id.* at ¶27). Accordingly, Proponent respectfully requests that the Agency enter a Final Order consistent with the affirmative relief proposed by Proponent.

II. RESPONDENTS SHOULD BE HELD LIABLE FOR RESTITUTION TO CONSUMERS AND THE PROPONENT'S COSTS FOR DISTRIBUTING RESTITUTION TO CONSUMERS.

Section 13-402(b)(1) of the Consumer Protection Act directs that the Agency order violators of the Act to "take affirmative action, including the restitution of money or property" received from consumers "in connection with a violation." Restitution under the Consumer Protection Act encompasses the principle that those who engage in deceptive practices should not be permitted to retain any portion of the illicit profits. *State v. Andrews*, 73 Md. App. 80, 89 n.7 (1987), *quoting Consumer Protection Division v. Consumer Publishing Co.*, 304 Md. 731, 779 (1985). Proponent's proposed Final Order provides for restitution to consumers after allowing for reasonable, and even high but not exorbitant, profits for Respondents.

The ALJ made several proposed findings that support an award of restitution in this matter. She found that Respondents violated the Act each time they charged a line item "supplies fee" when that figure had "no basis in reality," was "added to each sales receipt to increase Respondent's profit on each call" (Proposed Decision at 72-73), and bore no relation to any supplies actually used in the transaction (*id.* at 102). More specifically, she found that ATCL's charges for supplies were separate from the basic fee to unlock a vehicle (*id.* at 65) and that "the fee was never related to supplies actually used on any particular locksmith services job"

(*id.* at 72). Proponent's Schedule C[2], derived from Respondents' sales receipts, shows that Respondents charged at least $19,613.77 in unwarranted supplies fees. Respondents should be ordered to disgorge these supplies fees for the benefit of consumers. (Proposed Final Order at ¶28).

The ALJ also concluded that Respondents violated the Act each time they misrepresented the price of hardware by showing a fictitious "list price" on consumers' sales receipts. (Proposed Decision at 102). The violations occurred when Respondents' sales receipts showed a list price that "bore no relation to anything other than how much the Respondent thought he could get out of any particular consumer . . . . The Respondent then wished to appear 'lenient' in his dealings with these consumers, so he would actually charge something less than the 'list price.' This was designed to deceive consumers by creating the illusion that they received a bargain from the Respondent when from an objective standpoint they were still overcharged for the item." (*Id.* at 72).

When ATCL charged more for hardware than the true distributor's list price, while falsely representing that consumers received a discount from the "list price," Respondents should be ordered to disgorge the charges that exceed the true list price. Respondents charged at least $12,702.91 in unwarranted hardware costs when they misrepresented the list price. (Schedule D). These overcharges for hardware should be returned to consumers. (Proposed Final Order at ¶29).

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[2] Schedules A, B, C and D were submitted to the ALJ in connection with Proponent's

Separate and apart from their charges for "supplies" and hardware costs, the ALJ found that Respondents' fees for other locksmith services, such as unlocking a car door, picking or drilling and replacing a residential lock, recoding a cylinder, and copying or generating car and residential keys, "were consistently higher than even high-end competitors" (Proposed Decision at 65); "outrageous" (*id.* at 91); and "exorbitant by any comparison to the next highest priced competitor (*id.* at 78).

Consumers who were misled by Respondents' exorbitant charges should receive restitution. Judge Farrell's Proposed Findings of Fact incorporate the price schedules used by Pop-A-Lock, a high volume competitor, and Baldino's Lock & Key, a high-end competitor for these various services, including their basic service charges and overtime rates. (*Id.* at 13, n.6, adopting the rate schedules in Schedule A from the competitors). Baldino's Lock & Key's rates provide a very conservative basis for determining a fair price for Respondents' locksmith services – rates used by a company that has a support staff and multiple locations. (Baldino testimony).

Proponent used Schedule A to propose findings that Respondents overcharged consumers who paid more than Baldino's would have charged for the same service, and included the proposed measure of overcharges in Schedule B. The ALJ, however, raised two concerns about using Schedule B as a measure of Respondents' overcharges for locksmith services. She noted

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Proposed Findings of Fact and Conclusions of Law.

that at least one consumer agreed to Respondents' charges before any service was performed.[3] She also commented on the apparent irrationality of characterizing any charge in excess of Baldino's, no matter how small, as an overcharge. (Proposed Decision at 99).

Consistent with these concerns and with the ALJ's findings that Respondents' "charges were consistently higher than even high-end competitors" (*id.* at 65), Respondents should pay restitution equal to the excess of their charges over Baldino's charges if 1) the consumer did not agree to the charge in advance of the service and 2) the difference between what Baldino's would have charged and what Respondents in fact charged was material to the consumer. (Proposed Final Order at ¶30). The attached proposed Final Order adopts these principles. It provides that Respondents pay restitution to all consumers whom Respondents charged amounts in excess of Baldino's charges if a claims process determines that the consumer did not agree to the charges and states that any excess over Baldino's charges would have been material to the consumer. (*Id.* at ¶¶30, 34).

Consistent with these findings, the proposed Final Order, contains a restitution order requiring Respondents to pay restitution of at least $19,613.77 for supplies fees that the ALJ found were improperly charged; of at least $12,702.91 for unwarranted hardware costs; and $100,000.00 to fund a restitution account for consumers who were overcharged in comparison

[3] Pamela Eberhard agreed, before the locksmith services, to pay Respondents $720.25. Respondents charged $720.25 on Ms. Eberhard's daughter's credit card but, also, pocketed $500 that Ms. Eberhard had given in cash. (*Id.* at 24-25).

with Baldino's charges and in addition to any payments for supplies fees and hardware costs.[4] (Proposed Final Order at ¶30). If a larger amount is necessary to compensate consumers after the claims process, the Division will so inform Respondents. (*Id.* at ¶35). If the claims process establishes a smaller restitution amount, the Division will return the surplus to Respondents. (*Id.* at ¶36).

The proposed claims process and restitution set forth in the proposed Final Order requires the Agency to distribute restitution to eligible consumers and only requires Respondents to pay the amounts that they improperly took from consumers. Such a claims process is consistent with the purpose of restitution, which is to force Respondents to disgorge benefits that would be unjust for them to keep. *Consumer Publishing*, 304 Md. at 775.

Finally, Respondents are also liable for costs under Md. Code Ann., Com. Law § 13-402(b)(1) and 13-409. Consistent with these provisions of the Consumer Protection Act, the proposed Final Order requires Respondents to pay the costs of conducting the claims process, as well as the Agency's cost of conducting its investigation. (Proposed Final Order at ¶¶ 34, 37).

III. RESPONDENTS SHOULD BE ORDERED TO PAY A SUBSTANTIAL CIVIL PENALTY FOR THEIR CONSUMER PROTECTION ACT VIOLATIONS.

Section 13-410 of the Consumer Protection Act provides that a merchant who violates the Consumer Protection Act is subject to a fine of up to $1,000 for each violation. The Act defines

[4] Schedule B shows how much consumers would have been charged for various locksmith services if they had been charged at Baldino's rates. It also shows that Respondents' charges exceed Baldino's by $111,341.68, assuming that Ms. Eberhard paid $500 in cash in addition to the $720.25 that she agreed to in advance. The claims process will determine which of these consumers agreed to the charges and whether the excess charges were material to

"merchant" as "a person who directly or indirectly either offers or makes available to consumers any . . . consumer goods, consumer services, consumer realty or consumer credit." Md. Code Ann., Com. Law § 13-101(g). Respondents offered goods and services to consumers and therefore acted as a merchant under the Act. (Proposed Decision at 100-01, Proposed Conclusions of Law, ¶¶ 2-3). The attached proposed Final Order finds that Respondents committed a total of 916 violations of the Consumer Protection Act based on the violations found by the ALJ in her Proposed Decision as well as a violation for Respondents' misleading and deceptive guarantee of 100% satisfaction. (*See* Proponent's Exception).

The ALJ's general findings support a conclusion that Respondents violated the Consumer Protection Act in every consumer transaction. She described, for example, a "gauntlet of unfair trade practices" designed to coerce consumers into paying their inflated fees. Respondent Horton blocked consumers' vehicles with his van, held consumers' keys, credit cards and other documents hostage unless they agreed to sign invoices authorizing his charges, reassured consumers that their insurance policies would cover the costs, and, after the *Ex Parte* Order, tricked consumers into signing estimates as if to show that they accepted his outrageous charges. (Proposed Decision at 92-97). The ALJ found that these and other practices were a regular part of Respondents' business practices. By using these unfair and deceptive practices, Respondents charged consumers fees that the ALJ characterized as being "unusual in the industry and exorbitant by any comparison to the next highest priced competitor . . . ." (*Id.* at 78).

Rather than count one or more violations for every consumer who received locksmith

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consumers.

services from Respondents, Proponent suggests a more conservative count of the number of violations in this matter. Of the thirty-three consumers who testified, whether live or by affidavit, none received an accurate estimate of Respondents' charges before the service.[5] Accordingly, while it would be reasonable to infer that none of Respondents' customers received accurate estimates, Proponent merely proposes a finding that there were at least 33 such violations.

Respondents violated the Consumer Protection Act every time they gave false and misleading list prices for hardware on sales receipts that bore no relationship to the Respondents' actual costs and were "designed to deceive consumers by creating the illusion that they received a bargain from the Respondent when from an objective standpoint they were still overcharged for the item." (*Id.* at 71-72). Respondents' sales receipts, included in Proponent's Exhibit 49 and summarized in Schedule D, show that Respondents provided consumers with Sales Receipts that contained misleading "list prices" at least 180 times. Accordingly, the attached proposed Final Order includes a finding that Respondents committed 180 violations of the Consumer Protection Act by their use of false and misleading hardware list prices. (Proposed Final Order at ¶40).

The ALJ also found that Respondents violated the Consumer Protection Act by charging consumers unwarranted "supplies fees" that were "never related to supplies actually used on any particular locksmith services job . . . ." (Proposed Decision at 72). The ALJ found that Respondents commenced charging their deceptive supplies fee in April 1999. The Sales

[5] Even Ms. Eberhard did not receive an accurate estimate because Respondents charged her $500 more than she had been told and agreed to before the service. Respondents simply took her cash.

Receipts contained in Proponent's Exhibit 49 reflect that at least 675 consumers were charged deceptive supplies fees. Accordingly, the proposed Final Order includes a finding that Respondents violated the Consumer Protection Act 675 times by charging supplies fees that had no relation to any supplies actually provided by Respondents. (Proposed Final Order at ¶40).

The proposed Final Order counts three violations for the following three misleading promotional practices: (i) Respondents' misrepresentation of their licensing status, (ii) their claim to have a team with 32 years' experience, and (iii) their claim of accreditation by the Better Business Bureau after that accreditation was revoked. The proposed Final Order, also, includes a finding of three violations for Respondents' misrepresentations to at least three consumers concerning their affiliation with Pop-A-Lock and six violations in connection with Respondent Horton's misrepresentations concerning his status as the owner and sole employee of Around The Clock Locksmith. (*Id.*). The proposed Final Order includes a violation for Respondents' deceptive claim that they guarantee 100% satisfaction. (*Id.*).

Finally, the ALJ found that Respondents sought to overcome consumer reluctance to pay their charges by "falsely advising that their insurance companies would reimburse the consumers for [their] charges," when, in fact, consumers were rarely reimbursed for Respondents' services. (*Id.* at p. 94). The ALJ found that this misrepresentation was made to at least fifteen consumers: Ms. Park, Mr. Fritz, Ms. Kropac, Mr. Knebel, Ms. Wright, Ms. Busby, Ms. McGovern, Mr. Collins, Mr. Lennox, Mr. Grube, Ms. Purcell, Ms. Worcester, Ms. Russell, Ms. Susan Delawder and Ms. Roberts. (*Id.*; the Findings of Fact that support the ALJ's conclusion are Proposed Findings Nos. 89, 97, 109, 150, 157, 212, 259, 277, 291, 314, 325, 357, 374,402). Accordingly, the proposed Final Order finds that Respondents committed at least fifteen violations of the

Consumer Protection Act by misrepresenting consumers' ability to obtain reimbursement by their insurance carriers. (Proposed Final Order at ¶40).

Pursuant to Md. Code Ann., Com. Law, § 13-410(d), the Agency must consider five factors when setting the amount of the penalty. These factors weigh in favor of a significant penalty. Consistent with Judge Farrell's findings and an analysis of the factors contained in § 13-410(d), the proposed Final Order requires Respondents to pay a civil penalty of at least $300.00 for each of 916 violations, for a total civil penalty of at least $274,800. (Proposed Final Order at ¶48).

A. The severity of the violations

The ALJ found that Respondents manipulated consumers by keeping important price information from them. (Proposed Decision at 82). Both before and after the Agency ordered them to provide accurate estimates of the cost of their services, Respondents gave "grossly low" estimates, or no estimates at all, in order to obtain consumers' business without disclosing their exorbitant charges. (*Id.* at 92). Consumers suffered "substantial economic injury" when they were charged hundreds to thousands of dollars more than they would have paid a reasonable high-end price locksmith. (*Id.* at 97-99). For example, Respondents told Hae Young Park that it would cost $75.00 to unlock a house, but billed her $521.13. (*Id.*). Amy Russell was quoted a price of $85.00 plus $25.00 for a new lock to replace the lock in her home, but Respondents charged her $1,056.76. Frequently, Respondents refused to give any estimates at all -- estimates that the ALJ found and that Respondents admitted should have been given -- and then charged thousands of dollars for simple unlocking services. (*Id.* at 93). Altogether, Respondents charged consumers $111,216.68 more than these consumers would have been charged by Baldino's for

the same services. *See* Schedule B.

Respondents' practices had a severe emotional impact on consumers. The ALJ described consumer "reactions of crying, of being speechless, of feeling violated, of feeling sick, [and] of being victimized. . . ." (*Id.* at 94). Hundreds of consumers were affected by Respondents' practices. Considering these facts, the Agency should conclude that the Respondent's violations of the Consumer Protection Act were severe.

B. Good faith of the violator

The ALJ's findings show that Respondents acted in bad faith. She found that Respondents intentionally failed to provide estimates despite admitting that it is "imperative" that such information be provided to consumers. (*Id.* at 93). She also found that Respondent Horton repeatedly lied to consumers about himself and his company to trick consumers into doing business with him and pay his high charges. The ALJ did not mince words: She concluded that Respondent Horton's testimony was "relentlessly perjurious." (*Id.* at 90).

Respondents' excessive charges and manipulation were not occasional or inadvertent. They engaged in practices that pressured consumers to agree to their prices. Respondents were able to charge fees that were grossly out of line with those of their competitors by refusing or failing to disclose their fees, by charging consumers' credit cards without their authorization or compelling consumers to authorize the charge by blocking in their vehicles, and by holding consumers' personal items hostage unless they agreed to pay their exorbitant charges. (*Id.* at 94). "The shock value of [placing the charges on consumers' credit or debit cards before they saw what the charges would be] should not be underestimated and put consumers at further disadvantage in their dealings with the Respondent." (*Id.* at 94).

Even the entry of an *Ex Parte* Order, requiring Respondents to give estimates before the service, did not stop their practices. Respondents simply added to their manipulative practices by creating documents titled "Estimate" after the Agency issued its *Ex Parte* Order. These purported estimates were hidden among other papers held on a clipboard, were designed to resemble Respondents' sales receipts, were given to consumers to sign only after the work was completed and their charge cards swiped, were sometimes signed by someone other than the consumer, and were not given to consumers to keep. Respondents continued their abusive practices even after issuance of the *Ex Parte* Order. (*Id.* at 95 and ¶¶401, 404, 414-415, 430-432, 443, 455, 459, 468, 479, 487, 493, 503-504).

C. Prior history of violations

In the face of the Agency's *Ex Parte* Order, Respondents failed to provide estimates before performing their services and either tried to cover their tracks by forging consumers' signatures on estimates or tricking consumers into signing estimates that were not provided until after the services were performed. This history of continued violations of the Consumer Protection Act 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.

D. Deterrence

The Agency should consider whether a civil penalty will deter future illegal conduct by the Respondents and others. 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.

E. Restitution alone is insufficient to protect consumers.

Restitution without a sufficient civil penalty will simply return Respondents to their pre-violation position. It would in essence encourage persons like Respondents to violate the law, knowing that the only risk, if they get caught, is to return the money illegally taken from consumers. Moreover, in light of Respondents' continuing violation of the *Ex Parte* Order, Respondents have demonstrated a complete disregard for the law and the injunctive provisions of an order.

Respondents' violations, in all likelihood, exceed the number of violations known to the Agency and found by the ALJ. The 916 violations identified above are probably an underestimate of the total number of violations. Accordingly, a high penalty for each of the 916 violations is warranted.

Although the facts of this case could easily justify a civil penalty in excess of this amount, the proposed Final Order requires Respondents to pay a civil penalty of $274,800, calculated as a penalty of $300 for each violation that the ALJ found in her Proposed Decision plus the proposed exception. Such a penalty is needed to punish Respondents for egregious violations of the Consumer Protection Act that were undeterred by a prior order against Respondents.

WHEREFORE, Proponent requests that the Consumer Protection Division issue a Final Order that provides relief consistent with that requested in the proposed Final Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of November, 2010, a copy of the foregoing Request for Final Order and Proposed Final Order was served, via first class mail, on:

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