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CIVIL DIVISION
SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MORRIS COUNTY
DOCKET NO. C-31-10

PAULA T. DOW, Attorney General of the State of
New Jersey, and SHARON M. JOYCE, Acting
Director of the New Jersey Division of Consumer
Affairs,

Plaintiffs,

v.

ABLE ENERGY, INC, ABLE OIL COMPANY
t/a ABLE OIL, JANE and JOHN DOES 1-10,
individually and as owners, officers, directors,
shareholders, founders, managers, agents,
servants, employees, representatives and/or
independent contractors of ABLE ENERGY,
INC. and/or ABLE OIL COMPANY t/a ABLE
OIL, and XYZ CORPORATIONS 1-10,

Defendants.

Civil Action

COMPLAINT

Plaintiffs Paula T. Dow, Attorney General of the State of New Jersey ("Attorney General"),
with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, and Sharon M. Joyce,

Acting Director of the New Jersey Division of Consumer Affairs (“Director”), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, by way of Complaint state:

PRELIMINARY STATEMENT

1. At all relevant times, Able Energy, Inc. (“Able Energy”) and Able Oil Company t/a Able Oil (“Able Oil”) (collectively, “Defendants”) offered residential and commercial customers in the State of New Jersey (“State” or “New Jersey”) heating oil and related services. At least as of May 2009, Defendants solicited consumers to sign contracts for heating oil for the upcoming winter of 2009-2010.

2. Among other things, Defendants offered fixed price programs, specifically the “Fixed Price Budget Plan” and “Pre-Purchase Program.” Such plans required consumers to make all or a portion of their heating oil payments well before the winter season commenced. Consumers were willing to do so in order to lock-in heating oil prices for the season. Additionally, Defendants offered consumers an automatic delivery program, which ostensibly ensured that they would receive oil deliveries throughout the winter season. Moreover, Defendants offered consumers service agreements which, among other things, provided for the servicing of heating equipment.

3. The current winter has been severe, with bone-chilling cold and unprecedented levels of snowfall. In January and February 2010, as the tanks of Defendants’ customers grew empty, they contacted Defendants to arrange for a delivery of heating oil. In many instances, such deliveries were not forthcoming or were woefully inadequate (i.e. delivery of 20 gallons for a tank of 750-1,000 gallons). Under these circumstances, many consumers had no alternative but to obtain heating oil from another supplier. Defendants’ failure to provide consumers with the contracted for heating oil and/or servicing of heating has created a situation which threatens their health and safety. As

detailed below, such conduct is unconscionable and deceptive and in violation of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”).

PARTIES AND JURISDICTION

4. The Attorney General is charged with the responsibility of enforcing the CFA, N.J.S.A. 56:8-1 et seq., and all regulations promulgated thereunder, N.J.A.C. 13:45A-1.1 et seq. (“CFA Regulations”). The Director is charged with the responsibility of administering the CFA and the CFA Regulations promulgated thereunder on behalf of the Attorney General.

5. By this action, the Attorney General and Director (collectively, “Plaintiffs”) seek injunctive and other relief for violations of the CFA. Plaintiffs bring this action pursuant to their authority under the CFA, specifically N.J.S.A. 56:8-8, 56:8-11, 56:8-13 and 56:8-19. Venue is proper in Morris County, pursuant to R. 4:3-2, because it is a county in which the Defendants maintain a principal place of business.

6. Able Oil was incorporated in the State as a Domestic Profit Corporation on July 5, 1990. Able Oil maintains a principal business address of 344 Route 46, Rockaway, New Jersey 07866. Able Oil’s registered agent in the State is Timothy Harrington, who maintains a mailing address of 344 Route 46, Rockaway, New Jersey 07866.

7. Able Energy is a Delaware Corporation established on March 13, 1997. Upon information and belief, Able Energy maintains a principal place of business at 1140 Avenue of the Americas, Suite 1800, New York, New York 10036. Able Oil’s registered agent is the Corporation Service Company, which maintains a mailing address of 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

8. Upon information and belief, John and Jane Does 1 through 10 are fictitious individuals meant to represent the owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of Able Oil and/or Able Energy who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to the Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

9. Upon information and belief, XYZ Corporations 1 through 10 are fictitious corporations meant to represent any additional corporations that have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to the Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

10. At all relevant times, Defendants have advertised, offered for sale and sold heating oil and related services to consumers in the State and elsewhere.

11. At present, residential and/or commercial consumers in approximately 212 municipalities located in eight (8) counties in the State have contracted with Defendants to provide heating oil for the 2009-2010 winter season.

A. Advertisements:

12. At all relevant times, Defendants have advertised and otherwise offered for sale heating oil to consumers in the State and elsewhere through their website at www.ableenergy.com ("Able Website").

13. At all relevant times, Defendants have advertised and otherwise offered for sale heating oil to consumers in the State and elsewhere through print advertising.

14. At all relevant times, Defendants advertised and offered for sale a “Full Service Heating Oil Program” which included fixed price fuel programs, automatic delivery of heating oil and service plans for heating equipment.

B. Fixed Price Programs:

15. At least as of May 2009, Defendants advertised and offered for sale to its customers two (2) Fixed Price Programs for the purchase of heating oil, namely the Fixed Price Budget Plan (“Budget Plan”) and the Pre-Purchase Program for the 2009-2010 heating season.

16. The Able Website touted the Fixed Price Programs as follows: “Don't worry about fluctuating oil prices. Able lets you lock-in your heating oil price for the entire season. It's the smart way to protect against mid-season price spikes.”

17. As to the Budget Plan, the Able Website indicated that “10 easy monthly payments make this our most popular plan.”

18. Upon information and belief, Defendants required that consumers who elect the Budget Plan (“Budget Plan Consumers”) estimate the gallons of oil needed for the upcoming year.

19. Upon information and belief, Defendants calculated a Budget Plan Consumer's monthly payment based upon the number of gallons, priced at \$1.99 per gallon.

20. Upon information and belief, the actual price of heating oil for Budget Plan Consumers was fifteen (15) cents less than Defendants' price of the day on the day of delivery.

21. The Able Website represents that “Pre-Purchase Program - you buy you oil at pre-season prices. We store it and deliver to you throughout the winter.”

22. Upon information and belief, Defendants permitted consumers who contracted for the Pre-Purchase Program (“Pre-Purchase Consumers”) to purchase 500, 1000, 1500, or 2000 gallons of heating oil at a specified price.

23. Defendants represented that consumers who purchased oil through the Pre-Purchase Program (“Pre-Purchase Consumers”) would receive deliveries of oil as needed throughout the winter months.

24. Upon information and belief, approximately 469 residential or commercial consumers contracted with Defendants enrolled in the Pre-Purchase Program for the 2009-2010 heating season.

C. Automatic Delivery:

25. Upon information and belief, Budget Plan Consumers and Pre-Purchase Consumers were to receive automatic delivery of heating oil from Defendants (“Automatic Delivery Program”).

26. The Able Website refers to the Automatic Delivery Program as a “computerized replenishment program [that] tracks your usage of heating oil and automatically determines when you need your next delivery. We take care of your deliveries so that your family stays warm and safe all year long.”

27. The Able Website also refers to “Able Energy’s No Run-Out Guarantee,” which provides: “If an Able Energy automatic delivery customer ever runs out of oil, we will dispatch an emergency oil delivery 24 hours a day and, if needed, arrange for free emergency service by a qualified Able Energy technician to get your oil burner running again.”

D. Heating Equipment Services:

28. At all relevant times, Defendants advertised and offered for sale to consumers services, which include: (a) 24/7/365 Emergency Service; (b) Annual Cleaning and Preventative

35. At least as of January 2010, Defendants failed to service heating equipment in accordance with the consumers' Service Agreements.

36. At least as of January 2010, Budget Plan Consumers and Pre-Purchase Consumers who did not receive heating oil deliveries from Defendants were required to obtain heating oil from another supplier.

37. At least as of January 2010, Defendants have failed to respond to the telephone calls of Budget Plan Consumers and Pre-Purchase Consumers, among other things, who are requesting deliveries of heating oil.

38. At least as of January 2010, Defendants have failed to provide sufficient customer service personnel to handle consumer inquiries and complaints.

COUNT I

VIOLATION OF THE CFA BY DEFENDANTS (UNCONSCIONABLE COMMERCIAL PRACTICES)

39. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 38 above as if more fully set forth herein.

40. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing[] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise. . .

41. Since at least May 2009, Defendants have advertised, offered for sale and/or sold Heating Oil Services to residential and commercial consumers in this State and elsewhere.

42. In so doing, Defendants have engaged in the use of unconscionable commercial practices, false promises, and/or misrepresentations.

43. Defendants' conduct in violation of the CFA includes, but is not limited to, the following unconscionable commercial practices:

- a. Entering into contracts with consumers for the Budget Plan, Pre-Purchase Program and/or Service Agreements, then failing to provide the contracted for services;
- b. Accepting payments from consumers who purchased the Budget Plan, Pre-Purchase Program and/or Service Agreements, then failing to provide the contracted for services;
- c. Failing to deliver the contracted for heating oil to Budget Plan Consumers (i.e. no delivery or inadequate delivery), yet continuing to charge their credit cards or electronically debit their bank accounts for the monthly installment payments;
- d. Failing to deliver the contracted for heating oil to Pre-Purchase Consumers (i.e. no delivery or inadequate delivery);
- e. Delivering to a consumer diesel fuel rather than the contracted for heating oil;
- f. Making minimal deliveries of heating oil (i.e. 20 gallons), then failing to make any further deliveries;
- g. While on the consumer's premises delivering fuel, failing to make the necessary repairs to the consumer's heating system;
- h. Failing to provide Budget Plan Consumers and Pre-Purchase Consumers who were enrolled in the Automatic Delivery Program with an automatic delivery of heating oil;
- i. Failing to deliver heating oil to Budget Plan Consumers and Pre-Purchase Consumers, which resulted in damage to their heating systems;
- j. Failing to repair and/or service heating equipment damaged as a result of non-delivery of heating oil, thus requiring consumers to retain and pay other persons to perform such repairs and/or service;

- k. Failing to provide emergency and/or other service and repairs to consumers' heating systems, in accordance with the terms of their Service Agreements;
 - l. Failing to provide contracted for heating oil, thus requiring consumers to purchase oil from other fuel companies;
 - m. Failing to respond to requests by Budget Plan Consumers and Pre-Purchase Consumers for delivery of heating oil;
 - n. Failing to respond to the inquiries and/or complaints of Budget Plan Consumers and Pre-Purchase consumers; and
 - o. Failing to provide sufficient customer service personnel to address the inquiries of consumers.
43. Each unconscionable commercial practice by Defendants constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

COUNT II

VIOLATION OF THE CFA BY DEFENDANTS (FALSE PROMISES OR MISREPRESENTATIONS)

44. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 43 above as if more fully set forth herein.

45. In the operation of their business, Defendants have made false promises and misrepresentations including, but not limited to, the following:

- a. Representing that consumers enrolled in the Automatic Delivery Program, including Budget Plan Consumers and Pre-Purchase Consumers will receive automatic deliveries of heating oil, when such is not the case;
- b. Representing that consumers enrolled in the Automatic Delivery Program, including Budget Plan Consumers and Pre-Purchase Consumers, who run out of oil will receive an emergency oil delivery and emergency service to their heating equipment, when such is not the case;

- c. Representing that consumers who purchased Service Agreements will receive “[e]mergency oil burner service 24 hours a day, 7 days a week, 365 days a year,” when such is not the case;
- d. Representing to a consumer that the oil tank was full and thus required no delivery of heating oil, when such was not the case;
- e. Misrepresenting to consumers who ran out of heating oil that a delivery would be made; and
- f. Misrepresenting to consumers that repairs would be made to heating equipment.

46. Each false promise and/or misrepresentation by Defendants constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court enter judgment:

- (a) Finding that the acts and omissions of the Defendants constitute multiple instances of unlawful practices in violation of the CFA, N.J.S.A. 56:8-1 et seq.;
- (b) Permanently enjoining the Defendants and their owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, independent contractors and all other persons or entities directly under their control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq.;
- (c) Directing the assessment of restitution amounts against the Defendants, jointly and severally, to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any practice alleged herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;

- (d) Assessing the maximum statutory civil penalties against the Defendants, jointly and severally, for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- (e) Directing the assessment of costs and fees, including attorneys' fees, against the Defendants, jointly and severally, for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and
- (f) Granting such other relief as the interests of justice may require.

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

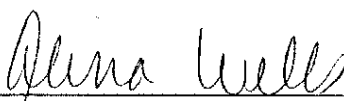
By: Alina Wells
Alina Wells
Deputy Attorney General

Dated: March 4, 2010
Newark, New Jersey

RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA") is not the subject of any other action pending in any other court of this State. I am aware that private contract and other actions have been brought against the Defendants, but have no direct information that any such actions involve violations of the CFA. I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I also certify that there is no other party who should be joined in this action at this time.

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 

Alina Wells
Deputy Attorney General

Dated: March 4, 2010
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Alina Wells, Deputy Attorney General, is hereby designated as trial counsel on behalf of Plaintiffs in this action.

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Alina Wells
Alina Wells
Deputy Attorney General

Dated: March 4, 2010
Newark, New Jersey