

STATE OF MAINE
YORK, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. 08-00014

STATE OF MAINE)
)
)
 Plaintiff,)
)
 v.)
)
 PRICE-RITE FUEL, INC)
 VEILLEUX OIL AND SERVICE , INC.,)
 PERRON FUEL, INC.)
 And NICHOLAS CURRO, III,)
)
 Defendants.)

FIRST AMENDED
COMPLAINT

I. INTRODUCTION

1. The State brings this action against Price-Rite Fuel, Inc., Veilleux Oil & Service, Inc., Perron Oil, Inc. and Nicholas Curro, III (“defendants”) pursuant to the Maine Unfair Trade Practices Act (“UTPA”), 5 M.R.S.A. §§ 206-216 seeking permanent injunctive relief, restitution, civil penalties, costs and attorney’s fees.

II. PARTIES

2. Plaintiff, State of Maine, is a sovereign state and brings this action by and through its Attorney General pursuant to 5 M.R.S.A. §§ 191 and 209 and the powers vested in him by common law.

3. Defendant, Nicholas Curro, III, is an individual with an address at 27 Twin Island Drive, Biddeford, Maine. He is the President and owner of Price-Rite Fuel, Inc., Veilleux Oil & Service, Inc. and Perron Fuel, Inc., and their alter ego.

4. Defendant, Price-Rite Fuel, Inc. ("Price-Rite"), is a Maine corporation with its principal place of business at 599 Elm Street, Biddeford, Maine. It is engaged in the business of home heating oil delivery.

5. Defendant, Veilleux Oil & Service, Inc. ("Veilleux"), is a Maine corporation with a principal place of business at 599 Elm Street in Biddeford, Maine. It is engaged in the business of home heating oil delivery, and boiler installation, service and repair.

6. Defendant, Perron Fuel, Inc. ("Perron"), is a Maine corporation with its principal place of business at 599 Elm Street, Biddeford, Maine. It is engaged in the business of home heating oil delivery, and boiler installation, service and repair.

7. To adhere to the fiction of a separate corporate existence between and among defendants Curro, Price-Rite, Veilleux and Perron would serve to sanction fraud and promote injustice.

III. JURISDICTION

8. This court has jurisdiction over this action pursuant to 4 M.R.S.A. § 105 and 5 M.R.S.A. § 209.

IV. STATUTORY BACKGROUND

9. Under the UTPA, 5 M.R.S.A. § 207, unfair or deceptive acts or practices in the conduct of any trade or business are unlawful.

10. The defendants were at all times relevant to this complaint engaged in trade or commerce in and from the State of Maine, to wit: defendants advertise, offer for sale, and sell home heating oil, kerosene and propane to Maine consumers.

11. Pursuant to 10 M.R.S.A. § 1110 (2), a home heating oil, kerosene or liquefied petroleum gas dealer may not enter into a prepaid contract with a consumer unless the dealer has obtained and maintains security for those contracts.

12. Pursuant to 10 M.R.S.A. § 1110 (4) (C) a prepaid home heating oil, kerosene or liquefied petroleum contract must disclose to the consumer that the contract is secured and the method by which it is secured.

V. FACTS

13. Beginning in the summer of 2007 and continuing to the present, defendants entered into contracts with consumers who prepaid them for fuel to be delivered during the 2007/2008 home heating season. Copies of the contract are attached hereto and incorporated herein as Exhibit 1.

14. Beginning in December of 2007, the Attorney General received calls from consumer who prepaid defendants for fuel.

15. Consumers notified the Attorney General's Office in late December 2007 and early January of 2008 that Curro would not fill their tanks in accordance with their contracts.

16. Defendants told the consumers that he would not automatically deliver oil.

17. Defendants told consumers that they had to monitor their own fuel levels and call when they needed delivery.

18. When consumers called for delivery of oil, defendants either delivered 50 gallons or less at a time or failed to deliver any fuel at all.

19. Beginning on or about January 15, 2008, defendants stopped answering their phones.

20. Defendants have failed to honor customers' requests for refunds.

21. Defendants have failed to honor consumers' contracts for prepaid fuel.

22. As of the date of this complaint, the Attorney General has been contacted by approximately 70 consumers regarding their prepaid oil contracts with defendants.

COUNT I

(Deceptive Trade Practice)

23. Plaintiff repeats and realleges the preceding paragraphs of the complaint.

24. Defendants have engaged in the unfair or deceptive practice of inducing consumers to sign prepaid contracts for the delivery of fuel based on misrepresentations regarding when and how the oil would be delivered.

25. Defendants conduct as described herein is deceptive in violation of 5 M.R.S.A. §207 and is intentional.

COUNT II

(Unfair Trade Practice)

26. Plaintiff repeats and realleges the preceding paragraphs of the complaint.

27. Defendants have accepted payments from consumers for fuel and failed to deliver the fuel as promised.

28. Defendants failed to take reasonable steps to obtain and maintain the ability to fulfill the prepaid contracts they entered into with consumers.

29. The practices alleged in this count causes, and is likely to cause, substantial harm to consumers, that is not reasonably avoidable by the consumers themselves and is not outweighed by countervailing benefits to consumers or competition.

30. Defendants conduct as described herein is unfair, in violation of 5 M.R.S.A. § 207 and intentional.

COUNT III

(Violation of 10 M.R.S.A. § 1110/per se violation of Maine Unfair Trade Practices Act)

31. Plaintiff repeats and realleges the preceding paragraphs of the complaint.

32. Defendants have failed to obtain and maintain the required security for prepaid contracts for the delivery of fuel in violation of 10 M.R.S.A. § 1110.

33. Defendants conduct as alleged herein is a per se violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207 and is intentional.

COUNT VI

(Violation of 10 M.R.S.A. § 1110 (4) (C) /per se violation of Maine Unfair Trade Practices Act)

34. Plaintiff repeats and realleges the preceding paragraphs of the complaint.

35. Defendants contracts with consumers fail to disclose that the prepaid contract is secured by a method prescribed in statute in violation of 10 M.R.S.A. § 1110 (4) (C).

36. Defendants conduct as alleged herein is a per se violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207 and is intentional.

COUNT V

(Fraud)

37. Plaintiff repeats and realleges the preceding paragraphs of the complaint.

38. Defendants made false representations of material facts with respect to their ability to honor and fulfill prepaid contracts for the delivery of fuel for the purpose of inducing consumers to enter into the contracts and pay in advance.

39. Defendants had knowledge of and or recklessly disregarded the truth of representations they made with respect to their ability to fulfill prepaid contracts for the delivery of fuel during the winter heating season of 2007/2008.

40. Consumers justifiably relied on Defendants' misrepresentations as true and acted upon them, causing damages to consumers.

RELIEF REQUESTED

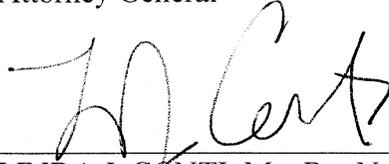
WHEREFORE, Plaintiff requests the following relief:

1. Declare that Defendants have violated the UTPA by:
 - A. Failing to comply with 10 M.R.S.A. § 1110
 - B. Accepting advance payment for products and services that were not delivered; and
 - C. Failing to refund consumers' deposits.
2. Declare that Defendants defrauded consumers of their prepaid oil contract money.

3. Pursuant to 5 M.R.S.A. § 209 and M.R. Civ. P. 65, permanently enjoin Defendants, their agents, servants, employees and those persons in active concert or participation with them who receive actual notice of the injunction from:
 - A. advertising, selling, distributing home heating oil, kerosene, or liquefied petroleum products in Maine;
 - B. entering into prepaid contracts for any goods or services sold in Maine;
 - C. taking deposits or any payment in advance of delivering products or performing services in Maine
4. Pursuant to 5 M.R.S.A. § 209, order the Defendants to submit an accounting of all prepaid contracts they entered into with Maine consumers from January 1, 2007 to the present and to provide equitable remedies, including restitution, rescission or disgorgement of profits, sufficient to make whole all consumers injured by their unlawful practices.
5. Pursuant to 5 M.R.S.A. § 209, order Defendants to pay a civil penalty of \$10,000 per violation for each intentional violation of the Unfair Trade Practices Act.
6. Pursuant to 5 M.R.S.A. § 209, order Defendants to pay the Attorney General its costs of suit and investigation, including attorney's fees.
7. Order such other and further relief as the Court may deem necessary to remedy the effects of Defendants' unfair and deceptive business practices.

Respectfully submitted,

G. STEVEN ROWE
Attorney General

A handwritten signature in black ink, appearing to read "L. Conti", written over a horizontal line.

Dated: February 4, 2008

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