

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

STATE OF MISSOURI, ex rel.)	
Attorney General Andrew Bailey,)	
)	Case No.
Plaintiff,)	
)	Division:
vs.)	
)	
WILLIAM J. RAYMOND)	
d/b/a J&D MASONRY and)	
CUTRIGHT MASONRY,)	
)	
Serve at:)	
)	
111 South Street)	
Brighton, IL 62012)	
)	
Defendant.)	

**PETITION FOR INJUNCTION, RESTITUTION, CIVIL PENALTIES,
AND OTHER RELIEF**

Plaintiff State of Missouri, at the relation of Attorney General Andrew Bailey, brings this Petition for Injunction, Restitution, Civil Penalties, and Other Relief against William J. Raymond, d/b/a J&D Masonry and Cutright Masonry, for violations of the Missouri Merchandising Practices Act, Chapter 407, RSMo (“MMPA”), and upon information and belief states as follows:

PARTIES

1. Andrew Bailey is the Attorney General of the State of Missouri and brings this action in his official capacity pursuant to Chapter 407, RSMo.

2. Defendant William J. Raymond is an Illinois resident who resides at 111 South St., Brighton, IL 62012. Defendant Raymond conducts business under the names “J&D Masonry” and “Cutright Masonry,” but has never registered either business with the Missouri Secretary of State.

JURISDICTION

3. This Court has subject matter jurisdiction pursuant to Article V, § 14 of the Missouri Constitution.

4. This Court has personal jurisdiction over Defendant pursuant to §506.500.1, RSMo, because Defendant conducted business within the State of Missouri.

5. This Court has authority over this action pursuant to § 407.100, RSMo, which allows the Attorney General to seek injunctive relief, restitution, penalties, and other relief in circuit court against persons who violate § 407.020, RSMo.

VENUE

6. Venue is proper in this Court pursuant to § 407.100.7, RSMo, which provides that “[a]ny action under this section may be brought in the county . . . in which the violation alleged to have been committed occurred.”

7. Venue is proper in St. Louis County in that violations of the Missouri Merchandising Practices Act described below occurred, among other places, in St. Louis County.

MERCHANDISING PRACTICES ACT

8. Section 407.020, RSMo, provides in pertinent part:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri, is declared to be an unlawful practice.... Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement, or solicitation.

9. “Person” is defined as “any natural person or his legal representative, partnership, firm, for-profit or not-for-profit corporation, whether domestic or foreign, company, foundation, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof.” § 407.010(5), RSMo.

10. “Merchandise” is defined as “any objects, wares, goods, commodities, intangibles, real estate, or services.” § 407.010(4), RSMo.

11. “Sale” is defined as “any sale, lease, offer for sale or lease, or attempt to sell or lease merchandise for cash or on credit.” § 407.010(6), RSMo.

12. “Trade” or “commerce” is defined as “the advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any property, tangible or intangible, real, personal, or mixed, and any other article,

commodity, or thing of value wherever situated. The terms “trade” and “commerce” include any trade or commerce directly or indirectly affecting the people of this state.” § 407.010(7), RSMo.

13. Pursuant to authority granted in § 407.145, RSMo, the Attorney General has promulgated rules explaining and defining terms used in § 407.010, RSMo, *et. seq.* The rules are codified in the Missouri Code of State Regulations (“CSR”). The rules relevant to Plaintiff’s allegations include, but are not limited to, the provisions of 15 CSR 60-8.010 to 15 CSR 60-9.110.

ALLEGATIONS RELEVANT TO ALL CLAIMS

14. Since at least 2020, Defendant offered, advertised, and sold concrete, landscaping, and masonry services in the State of Missouri to consumers individually, or using the business names “J&D Masonry” or “Cutright Masonry.”

15. Defendant solicited upfront payments from consumers in exchange for concrete, landscaping, and masonry services.

16. Prior to entering into contracts, Defendant represented to consumers he had the ability to perform the agreed-upon work, and would in fact perform all agreed-upon work in full.

17. Consumers provided advance payments to Defendant prior to the start of Defendant’s concrete, landscaping, and/or masonry services as requested by Defendant.

18. During delays in beginning or completing projects, Defendant continued to promise some consumers their projects would be completed as promised.

19. Some consumers were unable to contact Defendant in order to discuss the lack of progress on their project or that the work for which they had paid for had not started or been completed.

20. Although consumers made advance payments for agreed-upon work, Defendant did not complete the agreed-upon work as he represented he would.

21. Additionally, Defendant promised refunds to consumers for incomplete or substandard work, but failed to provide the promised refunds and instead continued to take deposits from new customers without completing existing jobs.

22. Defendant accepted upfront payments from at least four consumers for concrete, landscaping, and/or masonry services which Defendant failed to provide, failed to complete, and/or failed to refund thus violating §407.020, RSMo.

Consumer Examples

23. The following is an allegation concerning Defendant's conduct that harmed a specific consumer. The example is by way of illustration only and does not represent an exhaustive list of consumers harmed by Defendant.

24. Plaintiff specifically reserves the right to seek remedies under Chapter 407, RSMo, with respect to other consumers uncovered through investigation or discovery in this case.

Gina Galati

25. On or about September 11, 2020, Defendant contracted with Gina Galati to install a walkway at her residence in St. Louis, Missouri.

26. Defendant quoted Galati a price of \$2,300.00 to complete the project, and demanded a 50% up-front payment.

27. On September 2, 2020, Galati wrote a check to "JD Masonry" for \$1,150.00.

28. Defendant provided Galati a receipt for the payment and told her he would start work on September 11, 2020.

29. Contrary to his representation, Defendant did not start on the project on September 11, 2020.

30. Over the next week, Galati repeatedly contacted Defendant regarding the status of the project. In response, Defendant initially provided excuses, but then eventually stopped answering Galati's calls.

31. Galati thereafter requested a refund of the \$1,150.00 up-front payment. Defendant did not provide a refund.

32. Defendant never showed up to perform any of the work he had contracted to perform at Galati's residence.

VIOLATIONS OF LAW

COUNT I – FALSE PROMISES

33. Plaintiff incorporates all allegations stated above as if set forth herein.

34. Defendant engaged in conduct that violated § 407.020, RSMo, by falsely promising to consumers that in consideration for payment, Defendant would:

- a. provide concrete, landscaping, and/or masonry services;
- b. provide concrete, landscaping, and/or masonry services of adequate quality completed in certain time frames;
- c. provide refunds to consumers for work not performed.

35. Such promises were false or misleading as to Defendant's intentions or ability to perform the promises, or the likelihood the promises would be performed.

COUNT II – DECEPTION

36. Plaintiff incorporates all allegations stated above as if set forth herein.

37. Defendant engaged in conduct that violated § 407.020, RSMo, by using deception in connection with the sale of concrete, landscaping, and/or masonry services in that Defendant engaged in acts or practices which had the tendency or capacity to mislead, deceive, or cheat, or that tended to create the false impression that Defendant would perform and complete the contracted concrete, landscaping, and/or masonry services. Specifically, Defendant deceived consumers by:

- a. Stating or implying that consumer deposits would be spent on the labor and materials necessary to complete the concrete, landscaping, and/or masonry services consumers had contracted for, when Defendant in fact diverted the funds for his personal use;
- b. Representing that he had the skill, ability, and willingness to perform concrete, landscaping, and/or masonry services;
- c. Continuing to accept consumer deposits in exchange for promised concrete, landscaping, and/or masonry services when Defendant had not completed prior jobs or refunded the deposits for those prior jobs.

38. Defendant did not in fact provide the services for which he accepted payment.

COUNT III – UNFAIR PRACTICES

39. Plaintiff incorporates all allegations stated above as if set forth herein.

40. Defendant engaged in conduct that violated § 407.020, RSMo, by unilaterally breaching unambiguous provisions of consumer contracts in connection with the sale of concrete, landscaping, and/or masonry services in that Defendant failed to perform under the original terms of the contracts he entered into with consumers.

41. Defendant agreed to perform and complete concrete, landscaping, and/or masonry services for consumers in exchange for payment.

42. Defendant accepted payment, but failed to provide the contracted for services.

RELIEF

WHEREFORE, Plaintiff prays this Court enter judgment:

A. Finding that Defendant violated the provisions of § 407.020, RSMo;

B. Issuing a permanent injunction pursuant to § 407.100, RSMo, prohibiting and enjoining Defendant from:

i. accepting any advance payments for construction services;

- ii. owning or managing a business to provide construction services to consumers within the State; and
- iii. operating any kind of business within the state of Missouri without first registering the business with the State of Missouri.

C. Requiring Defendant, pursuant to § 407.100.4, RSMo, to provide full restitution to all consumers who suffered any ascertainable loss by the use of any of the unlawful, unfair, deceptive, or misleading practices alleged herein;

D. Requiring Defendant, pursuant to § 407.100.6, RSMo, to pay to the State of Missouri a civil penalty of up to \$1,000.00 per violation of Chapter 407 that the Court finds to have occurred;

E. Requiring Defendant, pursuant to § 407.140.3, RSMo, to pay to the State of Missouri an amount of money equal to ten percent (10%) of the total restitution ordered against Defendant;

F. Requiring Defendant, pursuant to § 407.130, RSMo, to pay all court, investigative, and prosecution costs of this case;

G. Requiring Defendant, pursuant to § 408.040, RSMo, to pay pre and post judgment interest;

H. Granting any additional relief this Court deems just and proper.

Respectfully Submitted,

ANDREW BAILEY
Attorney General

/s/ Michelle Hinkl
MICHELLE HINKL, #64494
Assistant Attorney General
815 Olive Street, Suite 200
St. Louis, MO 63101
(314) 340-7961 (phone)
(314) 340-7891 (fax)
Michelle.Hinkl@ago.mo.gov

Attorney for Plaintiff