

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION

STATE OF ARKANSAS, *ex rel.*
LESLIE RUTLEDGE, ATTORNEY GENERAL

PLAINTIFF

v. CASE NO. _____

ROBERT WALLEY d/b/a THE IRON
SHOP OF ARKANSAS

DEFENDANT

COMPLAINT

The State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General (“the State”), for its Complaint against Robert Walley d/b/a The Iron Shop of Arkansas (“Walley” or “Defendant”), states:

I. INTRODUCTION

1. This is a consumer protection action brought to redress and restrain violations of the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101 through 115 (“ADTPA”).

2. Robert Walley, doing business as the Iron Shop of Arkansas, sells and installs iron gates, fences, handrails, and staircases to consumers’ homes. Since 2018, multiple consumers have reported to the Attorney General’s Office that Walley failed to complete work, provided inferior products than those ordered, and

failed to follow through on his promises to return to consumers' homes to complete or correct projects. Other consumers have reported that Walley requested partial upfront payments for materials but failed to purchase the materials or to even begin the work.

3. The State seeks an injunction, an order imposing civil penalties, restitution for affected consumers, and other relief against Defendant.

II. PARTIES

4. Plaintiff is the State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General. Attorney General Rutledge is the chief legal officer of the State. Pursuant to Ark. Code Ann. § 4-88-104 and 4-88-113, the State may seek civil enforcement of the ADTPA.

5. Defendant Robert Walley resides in Conway County at 111 Mahan Dr., Center Ridge, AR 72027. Walley does business as the Iron Shop of Arkansas, and at all times relevant to the circumstances alleged in the Complaint, operated, controlled, and directed the business activities of The Iron Shop of Arkansas. Therefore, Walley is personally, jointly, and severally liable for the deceptive acts of The Iron Shop of Arkansas.

III. JURISDICTION

6. This Court has jurisdiction over this matter pursuant to Ark. Code Ann. § 4-88-104 and the common law of the State of Arkansas.

7. This Court has jurisdiction over Defendant pursuant to Ark. Code Ann. § 16-4-101, which extends jurisdiction to all persons, causes of action and claims for relief, to the maximum extent permitted by the Due Process Clause of the Fourteenth Amendment of the United States Constitution. At all times relevant to this Complaint, Defendant availed himself of the privileges of conducting activities within the State of Arkansas by operating and selling goods and services out of Center Ridge, Arkansas.

8. Venue is proper pursuant to Ark. Code Ann. §§ 4-88-104, 4-88-112, 16-60-104, and the common law of the State of Arkansas.

IV. FACTUAL ALLEGATIONS

9. Defendant Walley, doing business as the Iron Shop of Arkansas, sells, customizes, and installs iron gates, fences, handrails, and staircases to consumers' homes.

10. The Iron Shop of Arkansas is not registered with the Arkansas Secretary of State as a business entity or as a fictitious business name.

11. Defendant has never been licensed by the Arkansas Residential Contractors Committee (hereinafter "Committee") as required¹ by Ark. Code Ann. § 17-25-505.

12. During a Committee hearing on January 22, 2020, concerning complaints submitted to the Committee by three Arkansas consumers, Defendant

¹ Pursuant to Ark. Code Ann. § 17-25-513(3)(A), there is a licensing exemption for "[a] person or entity acting as a residential building contractor or a home improvement contractor on any project, when the cost of the work done or to be done does not exceed two thousand dollars (\$2,000)".

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was assessed a penalty of \$15,200 and ordered to cease and desist from performing home improvement contracting work without a license.² During a separate hearing held on June 24, 2020, concerning two additional consumer complaints, Defendant was again ordered to cease and desist residential home contracting without a license and was assessed an additional penalty of \$12,000.³ Defendant did not attend either hearing, has not paid any of the \$27,200 in civil penalties, and upon information and belief, is still conducting residential home contracting without a license.

13. At all times relevant to the Complaint, Walley advertised and solicited business over the Internet via The Iron Shop of Arkansas's Facebook page.⁴ Under the Facebook username "@IronshopofArk," Defendant posts pictures of "custom" iron gates and fences, includes a picture of an Iron Shop business card with his contact information, and states that "I have 30 years experience in building ornametal iron from hand made scrolls to drive gates walk gates fence any height any style spiarals beauiful rails r [sic]".⁵

14. Consumer A hired Defendant on May 5, 2018, and paid \$3,437.50 for the purchase and installation of two gates and two solar openers after responding to Defendant's Facebook advertisements. One of the openers has never worked because Defendant installed the solar panel in a shady area. The gates Defendant

² Exhibit 1.

³ Exhibit 2.

⁴ Exhibit 3, Screenshots of www.Facebook.com/IronshopofArk.

⁵ Exhibit 4; This is the original, unedited language from the "About" section of The Iron Shop of Arkansas's Facebook web page captured on June 26, 2020.

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installed were of a lower quality and cheaper than what the consumer ordered from Defendant. The gates are also rusting at weld points and do not open and close properly. Despite Defendant's promises to correct and complete the work, Defendant has failed to begin or complete any additional work or to provide a refund of unearned payments.⁶

15. Consumer B and Defendant entered into a contract for a 1,200 foot iron fence around Consumer B's property on December 17, 2018. As of the date of this filing, Defendant has only installed approximately sixty (60) feet of fence and has collected \$17,500 from Consumer B. Consumer B has demanded a refund of the unearned payments, but Defendant has not returned any money and the fence remains uncompleted.⁷

16. Consumer C hired Defendant to install iron fencing and a residential solar gate with a keypad for \$3,000 on January 2, 2019, after responding to Defendant's advertisements on The Iron Shop of Arkansas's Facebook page. The keypad and the gate have not worked since installation. Defendant removed the keypad to repair it, but left it on the consumer's porch instead of reinstalling it. The gate regularly freezes, reopens on its own, or does not completely close. Defendant also failed to install or provide the partial iron fence. To date, the work remains

⁶ Exhibit 5.

⁷ Exhibit 6.

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uncompleted, no refund has been provided, and the gate is still effectively inoperable.⁸

17. In March, 2019, Consumer D hired Defendant to provide and install a solar-powered iron gate with an opener and keypad stand to her residence for \$2,000. After installing the gate, Defendant told Consumer D that it would cost extra to install an “exit loop” in order to exit through the gate without a remote. Defendant then paid an extra \$350 on top of the invoice price for the gate to be functional. The gate has not worked properly since installation. It opens and closes on its own and the exit loop does not activate when approached in a vehicle. Despite Defendant’s promises to correct and complete the installation of a functional gate, Defendant has not completed any additional work or provided a refund.⁹

18. On August 7, 2019, Consumer E paid Defendant a down payment of \$1,020 to purchase and install a gate opener. Despite his assurances that he was coming to begin the installation, Defendant consistently failed to show up to work. After Defendant forwarded Consumer E an Ebay email confirmation of an inferior gate opener with fewer features than the one agreed to, Consumer E asked for a refund. Defendant agreed to provide a refund, but failed to return any unearned payments to Consumer E.¹⁰

19. Consumer F paid Defendant \$925 on December 29, 2019, for the installation of metal stair rails after seeing Facebook pictures purporting to

⁸ Exhibit 7.

⁹ Exhibit 8.

¹⁰ Exhibit 9.

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demonstrate Defendant's workmanship. Weeks later, before any work had begun, Defendant requested and was paid an additional \$120 for supplies. As of today's date, Defendant has neither performed any work for Consumer F nor provided a refund of the unearned \$1,045 payment.¹¹

20. On February 20, 2020, Consumer G hired Defendant to build, install, and paint an iron staircase to match the consumer's existing iron railing. Consumer G paid the full contract price of \$4,324 for a custom, handmade railing, and received a lower quality, commercial grade railing with multiple workmanship issues including, but not limited to, an overly steep, uneven second flight of stairs, an unattached bolt, an unremoved wooden pad where the concrete was poured, and random industrial screws attaching the staircase to the consumer's home. Additionally, Consumer G failed to paint the staircase as agreed, leading to an excessive amount of rust. Despite Defendant's promises to return to complete the job and to paint the staircase, the work remains uncompleted and Defendant has failed to refund any unearned payments.¹²

V. VIOLATIONS OF LAW

21. The ADTPA sets forth the State's statutory program prohibiting deceptive and unconscionable trade practices.¹³

22. The business practices of Defendant constitutes the sale of "goods" or "services."¹⁴

¹¹ Exhibit 10.

¹² Exhibit 11.

¹³ Ark. Code Ann. §§ 4-88-101, *et seq.*
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23. The same business practices constitute business, commerce, or trade.¹⁵

24. It is a violation to engage in unconscionable, false, or deceptive acts or practices in business, commerce, or trade.¹⁶ Defendant has engaged in prohibited conduct by:

- a. accepting payment and failing to complete installation services;
- b. accepting payment and failing to provide goods; and,
- c. repeatedly promising consumers that he will complete or correct iron work and failing to conduct any additional work.

25. It is unlawful to “knowingly make a false representation as to the characteristics, ingredients, uses, benefits, alterations, source, approval, or certification of goods or services or as to whether goods are original or new or of a particular standard, quality, grade, style, or model;”¹⁷ Defendant has engaged in prohibited conduct by:

- a. Selling and installing goods that are cheaper and of a lower quality than what consumers have agreed to purchase; and,
- b. Selling and installing goods that are different models or styles than what consumers have agreed to purchase.

26. The law prohibits the use of “concealment, suppression, or omission of any material fact with the intent that others rely upon the concealment,

¹⁴ Ark. Code Ann. § 4-88-102(4) and (7).

¹⁵ Ark. Code Ann. § 4-88-107.

¹⁶ Ark. Code Ann. § 4-88-107(a)(10).

¹⁷ Ark. Code Ann. § 4-88-107(a)(1).

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suppression, or omission” while selling any goods or services.¹⁸ Defendant has engaged in prohibited conduct by:

- a. Concealing or omitting from a consumer until after installation that a gate will not open and close without a remote unless the consumer purchases an “exit loop” at an additional cost; and,
- b. Concealing or omitting from consumers that Defendant does not have the necessary licensing to provide residential home improvement contracting work when the cost of the work is \$2,000 or more.

27. In connection with the advertisement of any goods or services, the act use, or employment by a person of any deception, fraud, or false pretense is a violation of the ADTPA.¹⁹ Defendant has engaged in prohibited conduct by advertising and providing services he is not legally authorized to provide.

PRAYER FOR RELIEF

28. The Attorney General may bring a civil action to seek to prevent persons from engaging in the use or employment of prohibited practices.²⁰

29. Likewise, the Attorney General may bring a civil action to seek to restore to any purchaser who has suffered any ascertainable loss by reason of the use or employment of the prohibited practices any moneys or real or personal

¹⁸ Ark. Code Ann. § 4-88-108(a)(2).

¹⁹ Ark. Code Ann. § 4-88-108(a)(1).

²⁰ Ark. Code Ann. § 4-88-113(a)(1).

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property which may have been acquired by means of any practices declared to be unlawful, together with other damages sustained.²¹

30. The Attorney General may seek an injunction prohibiting any person from engaging in any deceptive or unlawful practice.²²

31. Any person who violates the provisions of the ADTPA may be assessed a civil penalty of up to \$10,000 per violation.²³

32. In addition, any person who violates the provisions of the ADTPA shall be liable to the Office of the Attorney General for all costs and fees, including but not limited to, expert witness fees and attorney's fees, incurred by the Office of the Attorney General in the prosecution of such actions.²⁴

33. A "person" is an individual, organization, group, association, partnership, corporation, or any combination thereof.²⁵

34. Defendant is a "person" who has engaged in an unconscionable, false, or deceptive act or practice in business, commerce, or trade.

35. The State will exercise its right to a trial by jury.

WHEREFORE, the above premises considered, the State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General, respectfully requests that this Court:

²¹ Ark. Code Ann. § 4-88-113(a)(2)(A).

²² Ark. Code Ann. §§ 4-88-104 and 4-88-113(a)(1).

²³ Ark. Code Ann. § 4-88-113(a)(3).

²⁴ Ark. Code Ann. § 4-88-113(e).

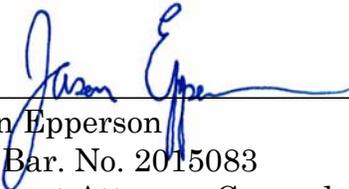
²⁵ Ark. Code Ann. § 4-88-102(5).

- a. Issue such orders, pursuant to Ark. Code Ann. §§ 4-88-104 and 4-88-113(a)(1), as may be necessary to prevent the use or employment by Defendant of the practices described herein which are violations of the ADTPA and from continuing to advertise and operate a regulated business without having the proper State license;
- b. Issue an order, pursuant to Ark. Code Ann. § 4-88-113(a)(2)(A), requiring Defendant to pay consumer restitution to those Arkansas consumers affected by the activities outlined herein; in addition, or in the alternative, enter an order requiring Defendant to remit to affected consumers all sums obtained from Arkansas consumers by methods prohibited by Arkansas law;
- c. Impose civil penalties pursuant to Ark. Code Ann. § 4-88-113(b), to be paid to the State by Defendant in the amount of \$10,000.00 per each violation of the ADTPA proved at a trial of this matter, the full amount of which will exceed the amount necessary to establish federal diversity jurisdiction.
- d. Issue an order, pursuant to Ark. Code Ann. § 4-88-113(e), requiring Defendant to pay the State's costs in this investigation and litigation, including, but not limited to, attorneys' fees and costs; and

e. For all other just and proper relief to which the State may be entitled.

Respectfully submitted,

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