

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
_____ DIVISION

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

PLAINTIFF

v. CASE NO. _____

KRISTY MICHELLE WEEMS

DEFENDANT

COMPLAINT

The State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General (“the State”),
for its Complaint against Kristy Michelle Weems (“Weems”), states:

I. INTRODUCTION

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

2. Weems was an employee of J&S Fry Enterprises, Inc. d/b/a Home Instead Senior Care (“Home Instead”). She was hired to provide home healthcare services to aging Arkansans. Weems made multiple unauthorized purchases and cash withdrawals using her clients’ debit cards and credit cards while she was providing care to them in their homes. Weems illegally obtained approximately \$13,431.00 before she was terminated.

3. The State seeks an injunction, an order imposing civil penalties, restitution for affected consumers, and other relief against the 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 Weems, an Arkansas resident at all times relevant to this complaint, is a resident of 722 North 35th Street, Fort Smith, Arkansas 72903.

III. JURISDICTION

6. This Court has jurisdiction over this matter pursuant to Ark. Code Ann. § 4-88-104 and § 16-4-101. Venue is proper pursuant to Ark. Code Ann. § 4-88-104, 4-88-112, and the common law of the State of Arkansas.

IV. FACTUAL ALLEGATIONS

7. On September 29, 2020, Weems was hired by Home Instead as an in-home health aide giving personal care to clients.¹ Weems's job duties were, among other things, to assist clients in their homes by providing "companionship and conversation;" performing "light housekeeping tasks;" and assisting clients with bathing, grooming, and toileting.²

8. Margaret Lynn Curry ("Curry"), age 74, was one of Weems clients that trusted Weems to enter her home and provide care.

¹ See Weems's Home Instead Employment File, pg. 53, attached as Exhibit A.

² *Id.* at pg. 7.

9. On May 25, 2021, Curry filed a complaint with the Van Buren Police Department alleging that Weems had been using Curry's debit card without permission to make cash withdrawals.³

10. According to bank records, Weems made 36 ATM withdrawals with Curry's debit card from December 9, 2020, to May 24, 2021, totaling \$1,483.00.⁴

11. The day after Curry filed the police report, May 26, 2021, Weems returned \$600.00 of the stolen money to Curry with a promise to pay the rest of it back by June 9, 2021.^{5 6}

12. Also on May 26, 2021, Jonathan Fry, owner of Home Instead, sent Curry a letter acknowledging that Weems used Curry's debit card without her permission and enclosed a check for \$883.00,^{7 8} which was the remaining balance that Weems owed Curry.

13. Robert Lauderdale ("Lauderdale"), age 78, was another of Weems's clients that trusted her to provide care in the confines of his home.

14. On June 22, 2021, Lauderdale's daughter, Cindy Rowden, filed a report with the Fort Smith Police Department on behalf of her father.⁹ Rowden alleged that

³ See Van Buren Police Department report attached as Exhibit B.

⁴ See copy of Curry's bank records attached as Exhibit C.

⁵ See Exhibit B.

⁶ See Weems's signed payment note to Curry attached as Exhibit D.

⁷ See Fry's reimbursement letter to Curry attached as Exhibit E.

⁸ See screenshot of Home Instead's filing with the Arkansas Secretary of State attached as Exhibit F.

⁹ See Fort Smith Police Department report attached as Exhibit G.

Weems took two of her father's credit cards and used them without his permission for purchases totaling \$11,948.00.¹⁰

15. On June 16, 2021, Jonathan Fry sent Rowden a letter apologizing for Weems using the credit cards without permission and enclosed a check for \$2,043.42.¹¹ Fry's letter indicated he intended the check to be payment in full.¹²

16. Upon information and belief, Weems may still be working as an in-home health care provider for another company in the same area of the state.

17. Upon information and belief, other persons who have not yet been named as Defendants in this Complaint may have participated in the activities described herein, and additional facts and violations which are not presently known to the State may be discovered and added to this Complaint at a later time.

18. The State reserves the right to amend this Complaint and to plead further.

V. VIOLATIONS OF LAW

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

20. The business practices of the Defendant constitute the sale of "goods" or "services."¹⁴ The same business practices constitute business, commerce, or trade.¹⁵

¹⁰ See Exhibit G.

¹¹ See Fry's reimbursement letter to Lauderdale attached as Exhibit H.

¹² *Id.*

¹³ Ark. Code Ann. §§ 4-88-101, *et seq.*

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

¹⁵ Ark. Code Ann. § 4-88-107.

21. Pursuant to Ark. Code Ann. § 4-88-201(2), an “elder person” is a person who is sixty years of age or older.

22. Pursuant to Ark. Code Ann. § 4-88-204, enhanced penalties may be imposed when an elder person or person with a disability is targeted and suffers damage or injury as a result of an ADTPA violation, including “financial exploitation” as defined by Ark. Code Ann. § 4-88-201(4).

COUNTS ONE AND TWO

Violation of Ark. Code Ann. § 4-88-107(a)(8)

23. The law prohibits “[k]nowingly taking advantage of a consumer who is reasonably unable to protect his or her interest because of physical infirmity or a similar factor.” Defendant engaged in prohibited conduct by:

- a. Taking advantage of Curry’s trust and inability to reasonably protect her property when Defendant was in Curry’s home due to Curry’s advanced age, need for in-home care, and Defendant’s unencumbered access to Curry’s home; and
- b. Taking advantage of Lauderdale’s trust and inability to reasonably protect his property when Defendant was in his home due to his advanced age, need for in-home care, and Defendant’s unencumbered access to Lauderdale’s home.

COUNTS THREE AND FOUR

Violation of Ark. Code Ann. § 4-88-107(a)(10)

24. It is a violation to engage in unconscionable, false, or deceptive acts or practices in business, commerce, or trade.¹⁶ “An act is unconscionable if it affronts the sense of justice, decency, and reasonableness.”¹⁷ Defendant engaged in prohibited conduct when:

- a. Defendant took advantage of Curry’s trust and inability to reasonably protect her property due to Curry’s advanced age, need for in-home care, and Defendant’s unencumbered access to Curry’s home by using her debit card to make cash withdrawals without Curry’s permission.
- b. Defendant took advantage of Lauderdale’s trust and inability to reasonably protect his property due to Lauderdale’s advanced age, need for in-home care, and Defendant’s unencumbered access to Lauderdale’s home by using his credit cards to make cash purchases without Lauderdale’s permission.

COUNTS FIVE AND SIX

Violations of Ark. Code 4-88-201(4)(A)

25. It is unlawful to engage in financial exploitation of an elder person, which means “the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of an elder person ..., including incurring debt in

¹⁶ Ark. Code Ann. § 4-88-107(a)(10).

¹⁷ *GulfCo of Louisiana, Inc. v. Brantley*, 2013 Ark. 367, 430 S.W.3d 7 (2013).

the name of an elder person ... for the benefit of a third party.”¹⁸ Defendant engaged in financial exploitation by:

- a. Taking advantage of Curry’s trust and inability to reasonably protect her property during all the times that Defendant was in Curry’s home due to Curry’s advanced age, need for in-home care, and Defendant’s essentially free access to Curry’s home, when she took Curry’s debit card and made numerous cash withdrawals without permission for Defendant’s own financial benefit.
- b. Taking advantage of Lauderdale’s trust and inability to reasonably protect his property during all the times that Defendant was in his home due to his advanced age, need for in-home care, and Defendant’s essentially free access to Lauderdale’s home, when Defendant took his credit cards and made numerous purchases without permission for Defendant’s own financial benefit.

VI. PRAYER FOR RELIEF

26. The Attorney General may bring a civil action to seek to prevent persons from engaging in the use or employment of prohibited practices.¹⁹

27. 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 property

¹⁸ Ark. Code Ann. § 4-88-201(4)(A).

¹⁹ Ark. Code Ann. § 4-88-113(a)(1).

which may have been acquired by means of any practices declared to be unlawful, together with other damages sustained.²⁰

28. The Attorney General may seek an injunction prohibiting any person from engaging in any deceptive or unlawful practice.²¹

29. Any person who violates the provisions of the ADTPA may be assessed a civil penalty of up to \$10,000 per violation.²²

30. Pursuant to Ark. Code Ann. § 4-88-204 and § 4-88-203(a), the Court may also impose enhanced penalties up to \$10,000 per violation when an elder person or person with a disability is targeted and suffers damage or injury as a result of an ADTPA violation.

31. 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.²³

32. A "person" is an individual, organization, group, association, partnership, corporation, or any combination thereof.²⁴

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

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

²⁰ Ark. Code Ann. § 4-88-113(a)(2)(A).

²¹ Ark. Code Ann. §§ 4-88-104 and 4-88-113(a)(1).

²² Ark. Code Ann. § 4-88-113(a)(3).

²³ Ark. Code Ann. § 4-88-113(e).

²⁴ Ark. Code Ann. § 4-88-102(5).

WHEREFORE, the above premises considered, the State of Arkansas, *ex rel.*

Leslie Rutledge, Attorney General, respectfully requests that this Court:

- 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 the Defendant of the practices described herein which are violations of the ADTPA, specifically, to permanently prohibit and enjoin Defendant working in a position where she is responsible for the care of elderly persons;
- b. Issue an order, pursuant to Ark. Code Ann. § 4-88-113(a)(2)(A), requiring Defendant to pay consumer restitution for any unrecovered financial loss to those Arkansas consumers affected by the activities outlined herein;
- c. Impose civil penalties pursuant to Ark. Code Ann. § 4-88-113(b), to be paid to the State by the 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. Find that Defendant targeted an elder person who suffered damage or injury as a result of ADTPA violations and financial exploitation by Defendant;

- e. In addition to any other civil penalties, impose enhanced penalties pursuant to Ark. Code Ann. § 4-88-204 and § 4-88-203(a) to be paid to the State by the Defendant in the amount of \$10,000 per each violation of the ADTPA proved at a trial of this matter;
- f. 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
- g. For all other just and proper relief to which the State may be entitled.

Respectfully submitted,

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ATTORNEY GENERAL

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