

NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
FILED

SUPERIOR COURT DIVISION

2015 AUG 20 A 9:55

File No. 14 CVS 05088

WAKE COUNTY, C.D.C.

STATE OF NORTH CAROLINA,
ex rel. ROY COOPER, ATTORNEY
GENERAL,

Plaintiff,

v.

EAGLE ROOFING AND RESTORATION,
LLC, GBS ROOFING, LLC, and
BRIAN WILLIAM SMITH, individually
and in his capacity as managing member
of EAGLE ROOFING AND
RESTORATION, LLC and GBS
ROOFING, LLC,

Defendants.

**JUDGMENT BY DEFAULT AND
PERMANENT INJUNCTION**

THIS MATTER came on to be heard before the undersigned Judge presiding over the August 17, 2015 civil session of Wake County Superior Court upon plaintiff's Motion for entry of a default judgment and permanent injunction against defendants. Special Deputy Attorney General David N. Kirkman appeared on behalf of plaintiff. No one appeared on behalf of any of the defendants despite their having been duly notified of the time and place for this hearing. The Court, having reviewed the record in this cause, including the affidavits of victim-home owners and the documents accompanying those affidavits, hereby finds and concludes as follows:

Findings of Fact

1. Plaintiff is the State of North Carolina, on relation of its Attorney General, Roy Cooper. Plaintiff brought this Unfair and Deceptive Trade Practices action on April 22, 2014, pursuant to authority found in Chapters 75 and 114 of the North Carolina General Statutes.
2. Plaintiff effected service of process on all three defendants via publication in The Sanford

Herald newspaper. The Clerk entered default against all three defendants on July 17, 2014.

3. Defendant Eagle Roofing and Restoration, LLC was a North Carolina limited liability corporation which had its principal place of businesses in Apex, NC. Defendant Eagle Roofing and Restoration, LLC was administratively dissolved by the North Carolina Secretary of State on March 4, 2014 for failure to file an annual report.

4. Defendant GBS Roofing, LLC was a North Carolina limited liability corporation which suddenly ceased operations in early 2013. It was administratively dissolved by the North Carolina Secretary of State in 2011 and again on March 4, 2014, both times for failure to file an annual report. At various times defendant GBS Roofing, LLC's principal places of business were in Wilmington, Sanford and Apex, NC.

5. At all times relevant to this action, individual defendant Brian William Smith (hereinafter "defendant Smith") was a resident of Wake County or, as of the date this action was filed, a resident of Lee County.

6. At all times relevant to this action, defendant Smith was the managing member and principal officer of the two corporate defendants in this action. He formulated, managed and controlled the practices of the two corporate defendants which form the basis for plaintiff's claims for relief under the North Carolina Unfair and Deceptive Trade Practices Act.

7. Plaintiff sued defendant Smith in his individual capacity and in his capacity as agent and principal officer of defendants Eagle Roofing and Restoration, LLC and GBS Roofing, LLC.

8. During 2012, 2013 and up until this Court halted their operations through the issuance of a Temporary Restraining Order dated April 23, 2014, it was defendants' regular business practice to have their employees and sales agents approach North Carolina home owners and advise them that their roofs were exhibiting signs of storm damage, typically hail damage.

9. After securing access to their roofs, it was then the regular business practice of defendants and their employees and sales agents to advise the home owners that their roofs had, in fact, suffered storm damage. They then encouraged the home owners to let them submit claims on their behalf to the home owners' insurance carriers.

10. Defendants and their agents secured written contracts with each home owner authorizing them to negotiate with the home owner's insurance company and to perform the repair work once the insurance company approved the claim.

11. Defendants' regular practice was to have the home owners pay them 50% of the cost of the repairs once the insurance companies' checks arrived.

12. Upon receiving payment from the home owners, defendants' regular practice was to put off indefinitely the commencement of the home owners' roof repair projects. On occasions, defendants' employees or agents would do a small amount of preparatory work, such as depositing a small quantity of roofing materials in the home owner's yard.

13. Defendants regularly failed to start or complete home owners' projects after obtaining funds from them. Losses typically suffered by each of defendants' home owner-victims were in the range of \$3000 to \$4000, about half the price of re-shingle job on a residential home. Some home owners lost much more than that.

Experiences of Larry Price, Wendell, NC

14. The affidavit of Larry Price, age 79, of Wendell, NC (Plaintiff's Exhibit 1 - attached to the Complaint herein), shows that a representative of defendant Eagle Roofing and Restoration, LLC (hereinafter "Eagle Roofing") came to Mr. Price's home in November of 2013, advised him of the need for a new roof due to hail damage, promised to help him file a claim with his insurance company, and then secured a written contract for Eagle Roofing to negotiate with his

insurance company and perform the work. The contract, a copy of which is attached to Mr. Price's affidavit, obliged him to pay 50% of the amount of the insurance payment to Eagle Roofing within five days of receipt. An Eagle Roofing representative promptly collected \$4,026 from Mr. Price days after his insurance company issued him a check for \$8,053.13. For the next ten weeks Mr. Price tried to get Eagle Roofing and defendant Smith to commence the work or at least get back with him. Mr. Price then tried to cancel the contract and was informed by an Eagle Roofing representative that he would be charged a 25% penalty. To date, Mr. Price has not had his roof repaired by defendants, nor has he gotten his money back.

Experiences of Cheri Sommer, Wilmington, NC

15. The court file also contains the affidavit of Cheri Sommer, a resident of Wilmington, NC. In that affidavit, Plaintiff's Exhibit 2, she describes how in May of 2012 a representative of defendant GBS Roofing, LLC (hereinafter "GBS") approached her and stated that it appeared she had storm damage on her roof. The representative then got Ms. Sommer's husband to sign a contract authorizing GBS to work with the insurance company and to perform authorized repairs. Ms. Sommer and her husband eventually paid GBS \$5,000, half of the amount of the proceeds of their claim against their insurance policy. GBS never returned to perform the work and defendant Brian William Smith would not respond to communications from Ms. Sommers and her husband.

Experiences of Sarita Olson, Fayetteville, NC

16. Sarita Olson is a resident of Fayetteville. As shown by her affidavit, Plaintiff's Exhibit 3, in November of 2012 Ms. Olson entered into a contract with GBS and paid them a deposit of \$2,9951.46 just before Christmas of that year. No work of any substance was performed on her home and by March 26, 2013 she was demanding her money back from

defendant Brian William Smith. She has not recovered any of her \$2,951.46 from the defendants.

Experiences of Galinda Joyner, Holly Springs, NC

17. Galinda Joyner is a resident of Holly Springs, NC. As shown by her affidavit, Plaintiff's Exhibit 4, she began interacting with a representative of Eagle Roofing in June of 2013 and signed various contracts with them. She signed a \$3,908.06 check from her insurance company over to Eagle Roofing on July 2, 2013, expecting the company to commence repairs. After the passage of several months, during which time Eagle Roofing and its representative tried to inflate the cost of repairs to \$19,021.08, Ms. Joyner and Eagle Roofing settled upon a cost of \$9,666.65 on November 9, 2013, which she paid. No work was performed during the ensuing months and Ms. Joyner experienced almost no success in getting defendant Smith or his employees to start the project. The only response she received came when she made contact with an Eagle Roofing employee named Ashley, who said her refund would be processed but that a 25% cancellation fee would be deducted from it. Ms. Joyner protested the fee, noting that she was not the party who violated the agreement. No refund check has been delivered to Ms. Joyner, nor has the promised work been performed on her house.

Experiences of Steven Lynch, Fayetteville, NC

18. Steven Lynch is a resident of Fayetteville, NC. As shown by his affidavit, Plaintiff's Exhibit 5, in July of 2012 Mr. Lynch entered into a contract with defendant GBS to work with his insurance company and to perform any roofing repairs that were authorized. The insurance company paid Mr. Lynch's roof damage claim and he turned approximately 50% of that payment, \$3,331.17, over to defendant GBS. No work was performed and his calls to the company seeking help went unanswered, except for one conversation that he had with a

woman who identified herself as defendant Brian William Smith's secretary. The woman promised that his work would commence the following week. It never commenced.

Experiences of Other North Carolina Home Owners

19. In addition to those the five home owners listed above, the Attorney General's Office has received thirty-one written complaints from other North Carolina home owners who experienced almost identical treatment at the hands of defendants. Copies of those written complaints, with sensitive financial information redacted, were attached to plaintiff's Affidavit of Linda Matthews Regarding Home Owner Losses. Ms. Matthews is an investigator with plaintiff's Consumer Protection Division and a custodian of the records which were attached to that affidavit. The records attached to Ms. Matthews affidavit document the following \$129,091.88 in additional losses that North Carolina home owners suffered at the hands of defendants:

<u>Home Owner</u>	<u>Amount Lost</u>
Henry Bunch 420 N. Grogg Stree Spring Lake, NC 27502	\$1665.58
Lavender Byrd 1735 Tingen Road Apex, NC 27502	\$3490.36
David Clarke 100 Williamston Ridge Drive Youngsville, NC 27596	\$2762.00
Flora L. Cobb 103 Cella Street Goldsboro, NC 27534	\$699.00

Ernest Edwards 636 Goodyear Drive Spring Lake, NC 28390	\$3500.00	
Wilbert and Debra Faison 4531 Turquoise Road Fayetteville, NC 28311	\$ 3918.75	
John Ferrell 10434 Buffalo Road Clayton, NC 27527	\$3225.00	
Patti C. Friedman 150 Gun Club Road Pinehurst, NC 28374	\$3457.00	
Kevin Grove 905 Greendale Court Apex, NC 27502	\$ 3232.21*	(*Note: Mr. Grove obtained a refund or charge-back from defendants)
Margaret W. Hannah 768 Chadwick Road Fayetteville, NC 28301	\$4000.00	
Ellen Marie Joyner Haynes 2216 Evers Drive Raleigh, NC 27601	\$ 6700.00	
Marcy S. Hedges 165 Wright Road Vass, NC 28394	\$1000.00	
Phyllis J. Hill 333 Venture Drive Wilmington, NC 28412	\$ 7174.69	

Jane Holloway \$1834.14
211 Langdon Street
Fayetteville, NC 28301

Eugene Ingram \$4764.30
527 Graffon Avenue
Fayetteville, NC 28301

Ronald Jolly \$6000.00
751 Candlewick Court
Fayetteville, NC 28306

John W. & Ida Mae Kerstetter \$3483.55
17771 US Highway 64 West
Siler City, NC 27344

Gavin Lindhout \$3376.27
502 Colonial Drive
Broadway, NC 27505

Demetrius McClain \$5692.37
91 Saunders Court
Spring Lake, NC 28390

Earnest M. McDougald \$5410.40
2727 Mt. Zion Church Road
Red Springs, NC 28377

Ronnie E. Morton \$ 3797.52
511 Carteret Place
Fayetteville, NC 28311

Joann C. Phillips \$4000.00
2917 Newark Drive
Raleigh, NC 27610

Renee Powers \$ 3772.57
330 Cypress Creek Farm Rd.
Sanford, NC 27332

Sabrina Rogers \$20,000.00
112 Thoroughfare Branch
Sanford, NC 27332

Barbara Sanders \$2979.56
4105 Edgemont Road
Wendell, NC 27591

Mary Ann Sellers \$3300.00
19 Pony Court
Bahama, NC 27503

William Trembley \$2110.00
c/o Attorney Robert Nauseef
P.O. Box 929
Durham, NC 27702-0929

Tammy Williams \$9800.00
c/o Attorney Robert Nauseef
P.O. Box 929
Durham, NC 27702-0929

Lucy W. Wilson \$523.64
2105 Michael Lane
Smithfield, NC 27577

Betty F. Wright \$1654.69
930 Spellman Drive
Fayetteville, NC 28311

Bruce T. Young \$5000.00
112 High Country Drive
Cary, NC 27513

Practices Witnessed by Former Employee Jim Davis

20. The affidavit of Jim Davis, one of the employees of defendant Brian William Smith, is attached to plaintiff's Complaint as Exhibit 6. According to Mr. Davis, the above described practices and omissions of defendants were deliberate.
21. None of the defendants' contracts with North Carolina home owners had attached to them properly filled-out notice of cancellation forms, as required in all off-premises sales by N.C. Gen. Stat. § 14-401(13). In addition, the transactions set forth in those contracts appear to be contingent upon events occurring several days subsequent to the signing of those contracts, specifically the approval of a home owner's claim by their insurance company. The home owner's three-day statutory right to reconsider the contract and cancel it was effectively negated by that language.
22. Defendants and their representatives regularly failed to advise customers verbally of their unconditional rights to cancel their transactions within three days.
23. Defendants' above alleged acts, practices, representations and omissions have been in and affecting commerce in North Carolina and have had a substantial and negative impact thereon.
24. Defendants perpetrated the above alleged acts, practices, representations and omissions upon North Carolina home owners knowingly and intentionally.
25. Defendants made no efforts to resolve the complaints that customers rightfully lodged against them. Moreover, they told some of those customers that they had to pay a 25% cancellation fee, even though it was defendants who deliberately and regularly failed to fulfill their obligations to perform work on the customers' homes.
26. Plaintiff's counsel has provided the Court with an affidavit reflecting that he has devoted

at least 42 hours to the preparation and prosecution of this action. This estimate appears to the Court as more than reasonable. Plaintiff's counsel has been prosecuting violations of the North Carolina Unfair and Deceptive Trade Practices Act in the Courts of North Carolina and in the federal courts for almost three decades and is known for his competency in such matters. This Court regularly compensates the State for his services in Deceptive Trade Practices cases at a rate of \$150 per hour. Such a rate is appropriate in this matter.

Conclusions of Law

Based on the foregoing, the Court concludes as a matter of law that:

1. The Court has personal jurisdiction over defendants as well as subject matter jurisdiction in this cause.
2. Each of defendants' aforesaid acts, practices, misrepresentations and omissions described above violated the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*
3. Plaintiff is entitled to all civil penalties, restitution orders, attorneys fees and permanent injunctive relief requested in its Complaint and in its Motion for Entry of Judgment By Default and Permanent Injunction.

Judgment for Civil Penalties: \$360,000.00

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is hereby entered against all three defendants for repeatedly violating the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.* Plaintiff therefore shall have and recover from defendants, jointly and severally, total civil penalties under N.C. Gen. Stat. § 75-15.2, in the sum of \$360,000.00, which penalties have been calculated as follows: \$5000.00 for each act of obtaining advance payment from the thirty-six home owners cited

above and not performing work as promised, or \$180,000.00, plus an additional \$5000.00 civil penalty for each of the thirty-six failures to include three-day cancellation notices and three-day cancellation forms in the contracts which defendants executed with the aforementioned North Carolina home owners, or \$180,000.00.

Judgment for Restitution: \$148,308.57

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment for restitution is hereby entered against defendants, jointly and severally and pursuant to N.C. Gen. Stat. § 75-15.1, in the amount of \$148,308.57. This represents the sum total of the individual losses set forth below. Any sums recovered from defendants pursuant to this Judgment shall first be applied to this Judgment for Restitution and disbursed, as soon as practicable, to the home owners listed. If funds or assets obtained by the Attorney General are not sufficient to satisfy fully this Judgment for Restitution, they shall be distributed to said home owners on a *pro rata* basis. Only after this Judgment for Restitution has been fully satisfied may plaintiff apply other funds recovered pursuant to this Judgment to defendants' remaining financial obligations herein.

Home Owner	Amount Lost
Henry Bunch 420 N. Grogg Stree Spring Lake, NC 27502	\$1665.58
Lavender Byrd 1735 Tingen Road Apex, NC 27502	\$3490.36
David Clarke 100 Williamston Ridge Drive Youngsville, NC 27596	\$2762.00

Flora L. Cobb 103 Cella Street Goldsboro, NC 27534	\$699.00	
Ernest Edwards 636 Goodyear Drive Spring Lake, NC 28390	\$3500.00	
Wilbert and Debra Faison 4531 Turquoise Road Fayetteville, NC 28311	\$ 3918.75	
John Ferrell 10434 Buffalo Road Clayton, NC 27527	\$3225.00	
Patti C. Friedman 150 Gun Club Road Pinehurst, NC 28374	\$3457.00	
Kevin Grove 905 Greendale Court Apex, NC 27502	[\$ 3232.21]	(Mr. Grove obtained a refund or charge-back from defendants)
Margaret W. Hannah 768 Chadwick Road Fayetteville, NC 28301	\$4000.00	
Ellen Marie Joyner Haynes 2216 Evers Drive Raleigh, NC 27601	\$6700.00	
Marcy S. Hedges 165 Wright Road Vass, NC 28394	\$1000.00	

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Ronald Jolly \$6000.00
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Galinda Joyner \$3908.06
6516 Mims Road
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John W. & Ida Mae Kerstetter \$3483.55
17771 US Highway 64 West
Siler City, NC 27344

Gavin Lindhout \$3376.27
502 Colonial Drive
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406 Pearl Street
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Demetrius McClain \$5692.37
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Sarita Olson \$2951.45
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Fayetteville, NC 28306

Joann C. Phillips \$4000.00
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Raleigh, NC 27610

Renee Powers \$ 3772.57
330 Cypress Creek Farm Rd.
Sanford, NC 27332

Larry Price \$4026.00
9570 Applewhite Road
Wendell, NC 27591

Sabrina Rogers \$20,000.00
112 Thoroughfare Branch
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Barbara Sanders \$2979.56
4105 Edgemont Road
Wendell, NC 27591

Mary Ann Sellers \$3300.00
19 Pony Court
Bahama, NC 27503

Cheri Sommer \$5000.00
3953 Halifax Road
Wilmington, NC 28403

William Trembley \$2110.00
c/o Attorney Robert Nauseef
P.O. Box 929
Durham, NC 27702-0929

Tammy Williams \$9800.00
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P.O. Box 929
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Lucy W. Wilson \$523.64
2105 Michael Lane
Smithfield, NC 27577

Betty F. Wright \$1654.69
930 Spellman Drive
Fayetteville, NC 28311

Bruce T. Young \$5000.00
112 High Country Drive
Cary, NC 27513

Total (minus Kevin Grove charge-back): \$148,308.57

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants, and each of their agents, employees, corporate officers, corporate successors and assigns, together with any parties acting in concert with any defendant having knowledge hereof, be and hereby are PERMANENTLY ENJOINED AND PROHIBITED from offering, performing or advertising, whether directly or indirectly, any roofing, home repair or home maintenance services, or services involving assistance with insurance claims, to any person or persons residing

in North Carolina. Similarly, defendants, plus each of their agents, employees, corporate officers, corporate successors and assigns, together with any parties acting in concert with any defendant having knowledge hereof, are hereby PERMANENTLY ENJOINED AND PROHIBITED from assisting or consulting with others on the offering, advertisement or performance of such services within the state of North Carolina.

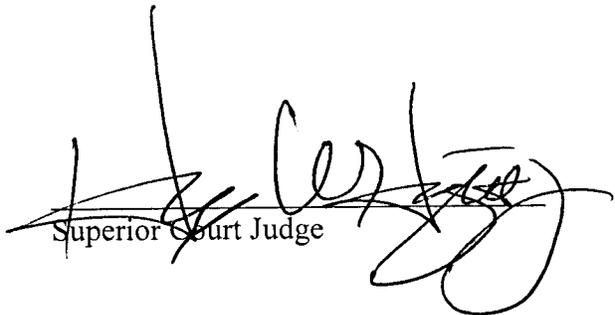
Award of Attorneys Fees: \$6,300.00

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, pursuant to N.C. Gen. Stat. § 75-16.1, that defendants pay the State of North Carolina \$6,300.00 as reimbursement of its attorney costs in this action. Defendants' obligation to pay this amount is also joint and several.

Costs Taxed to Defendants

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants shall reimburse plaintiff for all other costs incurred in this matter, including but not limited to the \$409.00 it paid in order to serve them with process via publication in *The Sanford Herald* newspaper. This obligation of defendants, also, is joint and several.

This the 20th day of August, 2015.


Superior Court Judge