

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
NO. 09 CV 001863

STATE OF NORTH CAROLINA ex rel. )  
Roy Cooper, Attorney General, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
AUTOMOTIVE PROTECTION, LLC and )  
CHRISTOPHER DOYLE, )  
 )  
Defendants. )  
 )  
 )

**JUDGMENT BY DEFAULT AND  
PERMANENT INJUNCTION**

FILED  
JAN 24 2011  
CLERK OF SUPERIOR COURT  
WAKE COUNTY, N.C.

**THIS MATTER** came before the undersigned Judge presiding over the January 24, 2011 civil session of Wake County Superior Court upon motion by Plaintiff State of North Carolina for entry of a Judgment by Default and Permanent Injunction against defendants Automotive Protection, LLC and Christopher Doyle. Assistant Attorney General Kimberly L. Wierzel (“AAG Wierzel”) appeared on behalf of the plaintiff. No one appeared on behalf of defendants. The Court reviewed the record in this cause, including the Complaint, the State’s Motion for Judgment by Default, the affidavits of North Carolina consumers, the affidavits of Consumer Protection Specialists with the State, and the affidavit of AAG Wierzel regarding attorneys fees. As a result thereof, the Court finds and orders as follows:

**FINDINGS OF FACT**

1. Plaintiff State of North Carolina brought this action against defendants on February 2, 2009 alleging violations of North Carolina’s Telephone Solicitations Act of 2003, N.C.G.S. § 75-100, *et seq.*, Telephonic Seller Registration and Bonding Act, N.C.G.S. § 66-260 *et seq.*, and Unfair and Deceptive Trade Practices Act, § 75- 1.1, *et seq.*, by: contacting

customers who are on the national Do Not Call list; targeting senior citizens; failing to register as a telephonic seller with the North Carolina Secretary of State; misrepresenting the terms of motor vehicle service contracts (“Service Contracts”); and making unauthorized withdrawals from consumers’ bank accounts.

2. The Court granted a temporary restraining order against defendants on February 5, 2009 (the “TRO”). The Court entered a Preliminary Injunction against defendants on February 16, 2009.

3. As shown by the record herein, the State of North Carolina served defendants with copies of the Complaint, the Alias and Pluries Summons and temporary restraining order on February 6, 2009.

4. As shown by the record, Warranty Finance, LLC (“Warranty Finance”) appeared as a non-party in this action on February 19, 2009. Warranty Finance acted as the “payment plan provider” for consumers that financed their Service Contract purchase. On February 16, 2009, Warranty Finance agreed, among other things: (1) to cease all collection efforts from any North Carolina resident that seeks to cancel their policy between February 16, 2009 and April 23, 2009; (2) not to disburse any funds to defendants; (3) to send a letter to certain North Carolina consumers to whom Automotive Protection sold a Service Contract summarizing certain information and giving those consumers the opportunity to opt out of continuing their Service Contract; and (4) reporting the cancellation results to the State. This agreement was filed as an exhibit with the February 16, 2009 Preliminary Injunction Order (the “Preliminary Injunction”).

5. On February 16, 2009, the State served defendants with copies of the Preliminary Injunction.

6. The defendants have not entered an appearance or filed any responsive pleading in this case.

7. On December 28, 2009, the State sought Entry of Default pursuant to North Carolina Rule of Civil Procedure 55(a). The State simultaneously served the defendants with a copy of the Motion for Entry of Default. On December 29, 2009, the Clerk of Court entered default against defendants (“Entry of Default”). The State timely served defendants with the Entry of Default and this Motion.

8. Since at least October 2007, defendant Automotive Protection, LLC (“Automotive Protection”) solicited consumers throughout North Carolina to purchase a Service Contract by calling North Carolina residential phone numbers, including residential telephone numbers that are listed in the national Do Not Call Registry. Consumers had not requested calls from defendants and did not give defendants advance permission to call for the purpose of soliciting their business. Defendants and their agents targeted purchasers or prospective purchasers 65 years of age or older.

9. Defendants obtained from unknown sources telephone numbers and information about vehicles that have been or are currently registered to North Carolina consumers. Defendants have not complied with the record keeping and training requirements in N.C.G.S. § 75-102(d). Defendants did not register as telephonic sellers with the North Carolina Secretary of State prior to making sales calls to North Carolina consumers.

10. Christopher Doyle was the member-manager of Automotive Protection. He managed, formulated, controlled and/or directed the activities and practices of defendant Automotive Protection. According to affidavits submitted by consumer-victims and attached to

the State's complaint, defendant Christopher Doyle spoke with consumer-victims and misrepresented the status of refunds to North Carolina consumers.

11. On January 4, 2008, the State sent a letter to defendant Automotive Protection and to defendant Doyle's attention regarding consumer complaints and notified defendants of possible violations of North Carolina's Telephone Solicitations Act. In that letter, the State requested defendants to cease and desist from calling North Carolina residents pending resolution of its investigation. Defendants ignored the State's request to cease and desist.

12. When defendants and their agents made sales calls to North Carolina consumers, they misrepresented the terms of the Service Contracts offered for sale. Misrepresentations included:

- a. Stating that defendants represent an auto manufacturer;
- b. Creating a false sense of urgency by claiming that this was a limited time opportunity;
- c. Stating that the Service Contracts were "warranties," "factory warranties," or "extended warranties" when in fact the product being sold was not a "warranty," "factory warranty," or "extended warranty," which can only be sold by an automobile manufacturer as provided in the federal Moss-Magnuson Warranty Act, 15 U.S.C. § 2301, *et seq.*;
- d. Stating that the consumer could cancel the "warranty" for any reason anytime in the first 30 days of their policy, when such was not the case ;  
and
- e. Stating that the "warranty" covered a mileage that the Service Contract did not cover.

13. Defendants' misrepresentations caused consumers to purchase the Service Contracts and provide their bank account information. Even if the consumer contacted defendants to cancel the contract immediately after purchasing the Service Contract, defendants withdrew money from the consumers' accounts and refused to provide refunds. In some cases, the consumer successfully blocked a withdrawal through their bank, only to have the same tactic tried again the following month.

### CONCLUSIONS OF LAW

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

14. This Court possesses personal jurisdiction over defendants Automotive Protection, LLC and Christopher Doyle and subject matter jurisdiction in this case.

15. Plaintiff is entitled to a judgment against defendants for violating the North Carolina Telephonic Seller Registration and Bonding Act, N.C.G.S. § 66-260 *et seq.* Defendants were not registered as telephonic sellers with the North Carolina Secretary of State. N.C.G.S. § 66-261. Violations of the Registration and Bonding Act are unfair and deceptive trade practices in violation of N.C.G.S. § 75-1.1. Defendants must pay enhanced penalties pursuant to N.C.G.S. § 66-266(c) for targeting North Carolinians that were 65 years of age or older. Defendants must pay penalties for violations of the Registration and Bonding Act in addition to the penalties for violations of N.C.G.S. § 75-1.1 and North Carolina Telephone Solicitors Act, N.C.Gen. Stat. § 75-100, *et seq.*

16. Plaintiff is entitled to a judgment against defendants for violating North Carolina's Unfair and Deceptive Trade Practices Act, § 75- 1.1 *et seq.* Every telemarketing phone call made into North Carolina while defendants were not properly registered is a violation of N.C.G.S. § 75-1.1. Defendants committed further unfair and deceptive trade practices in their

sales practices by: (1) making numerous misrepresentations regarding the coverage, terms and cancellation procedures in order to induce consumers to purchase Service Contracts; (2) failing to cancel contracts in accordance with defendants' cancellation policies; and (3) making unauthorized withdrawals from consumers' bank accounts and causing unauthorized charges to be made on consumers' credit cards. Pursuant to N.C.G.S. § 75-15.1, consumers are entitled to cancel any Service Contract purchased from defendants and to be refunded any monies paid under those contracts.

17. Plaintiff is entitled to a judgment against defendants for violating the North Carolina Telephone Solicitors Act, N.C.G.S. § 75-100, *et seq.* Defendants' had a persistent practice of: (1) placing telephone solicitation calls to numbers that had been enrolled in the national Do Not Call Registry by North Carolina residential telephone service subscribers; (2) failing to keep records required by the Telephone Solicitors Act; and (3) committing unfair and deceptive trade practices. Pursuant to N.C.G.S. § 75-102(o), "no contract or purchase agreement entered into during a telephone solicitation is valid, and no money from the prospective purchaser is due thereunder, unless:" the telephone solicitor has complied with certain provisions of the Telemarketing Sales Rule, including the record keeping requirements outlined in N.C.G.S. § 75-102, and if the contract and sales representations that precede the sale comply with "all other applicable federal and State laws, including [N.C.G.S. § 75-1.1]." The defendants did not comply with the record keeping requirements in the Telephone Solicitations Act. The defendants called consumers on the Do Not Call Registry. Defendants committed unfair and deceptive trade practices by, among other things: (1) making false and deceptive statements to induce consumers to purchase the Service Contracts; and (2) failing to abide by their own cancellation

policies. Therefore, each of the Service Contracts sold by Automotive Protection in North Carolina is voidable at the consumer's option and no money was due under these contracts.

18. The Attorney General has authority to investigate violations of N.C.G.S. § 75-100, *et seq.* and is charged with enforcement of the Telephone Solicitations Act. N.C.G.S. § 75-105. The State is entitled to reasonable attorneys fees if the court finds the defendant willfully engaged in the violations. N.C.G.S. § 75-105(d). On January 4, 2008, the State sent defendants a request to cease and desist their unlawful telemarketing activities. Defendants did not respond and continued their unlawful telemarketing activities. This behavior demonstrates willfulness.

19. As shown by her accompanying affidavit, counsel for plaintiff has devoted at least 40 hours to the prosecution of this civil action against this defendant. Counsel has practiced before the courts of North Carolina since November 2007 and has expertise in the trade practice and telemarketing enforcement provisions of Chapter 75 of the North Carolina General Statutes. Plaintiff seeks \$6,000, or \$150 per hour, as reimbursement for counsel's services to date, pursuant to N.C.G.S. § 75-105(d). The Court finds that amount to be reasonable and appropriate as an award of statutory attorneys' fees in this action.

20. Plaintiff is entitled to the statutory remedies requested in the Complaint and Motion for Entry of Default Judgment, including civil penalties, attorneys' fees and a permanent injunction prohibiting further violations. Defendants are joint and severably liable.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that:

1. Judgment is hereby entered in favor of Plaintiff State of North Carolina and against defendants Automotive Protection, LLC and Christopher Doyle for violations of the North Carolina Telephone Solicitors Act, N.C.G.S. § 75-100, *et seq.*, the North Carolina

Telephonic Seller Registration and Bonding Act, N.C.G.S. § 66-260 *et seq.*, and North Carolina's Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75-1.1;

2. Plaintiff shall have and recover from defendants Automotive Protection, LLC and Christopher Doyle the sum of \$4,511,500. This sum represents \$1,151,500 for violations of the Telephone Solicitations Act; \$3,100,000 for violations of the Telephonic Seller Registration and Bond Requirement Act; and \$260,000 for violations of North Carolina's Unfair and Deceptive Trade Practices Act;

3. This monetary judgment shall bear interest at the judgment rate from the date of entry until paid;

4. Defendants shall also pay plaintiff the sum of \$6,000, pursuant to N.C. Gen. Statute § 75-105, as reimbursement of its attorney costs to date;

5. The costs of this action are taxed to defendants, including the \$110 filing fee incurred by plaintiff; and

6. All Service Contracts that were sold by defendants are to be cancelled at the consumer's option with a full refund of any amounts paid on the Service Contracts sold by defendants.

### **PERMANENT INJUNCTION**

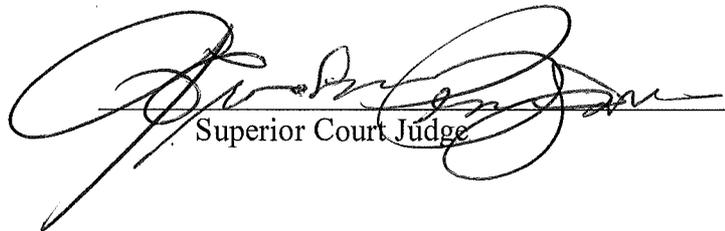
**IT IS FURTHER ORDERED** that defendants Automotive Protection, LLC, its officers, members, employees, agents, contractors, corporate successors and assigns, and any other party acting in concert with any of them having knowledge hereof, and defendant Christopher Doyle, his employees, agents, contractors, successors, assigns and any other party acting in concert with or on behalf of him, hereby are Permanently Enjoined from:

1. Engaging in any telemarketing sales or telephone solicitations (as that term is defined by N.C.G.S. § 75-101(9), the federal Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. Sec. 6101 *et. seq.*, the Telemarketing Sales Rule, 16 CFR Part 310, or by North Carolina law) to North Carolina consumers; and

2. Engaging in the marketing or administration of Service Contracts, or any other aspect related to or associated with the sales of Service Contracts, to North Carolina consumers.

**IT IS FURTHER ORDERED** that this Court retains jurisdiction in this matter in order to ensure proper compliance with the foregoing and to entertain appropriate motions for the modification thereof.

This the 24<sup>th</sup> day of January, 2011.

  
Superior Court Judge