



West Virginia E-Filing Notice

CC-20-2023-C-543

Judge: Kenneth Ballard

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NOTICE OF FILING

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
STATE OF WV EX REL PATRICK MORRISEY, ATT v. GLENN A. NAYLOR, II,
INDIVIDUALLY & D/B/
CC-20-2023-C-543

The following order - case - final was FILED on 7/9/2024 11:25:20 AM

Notice Date: 7/9/2024 11:25:20 AM

Cathy S. Gatson
CLERK OF THE CIRCUIT COURT
Kanawha County
P.O. Box 2351
CHARLESTON, WV 25301

(304) 357-0440

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY, Attorney General,**

Plaintiff,

v.

**CIVIL ACTION NO. CC-20-2023-C-543
JUDGE BALLARD**

**GLENN A. NAYLOR II
Individually and d/b/a
NAYLOR MONUMENT COMPANY, LLC,
and d/b/a NAYLOR MONUMENT
MEMORIAL SALES, and d/b/a
NAYLOR MONUMENT COMPANY,**

Defendant.

**ORDER DEEMING DISCOVERY RESPONSES ADMITTED,
GRANTING SUMMARY JUDGMENT IN FAVOR OF PLAINTIFF,
AND IMPOSING PERMANENT INJUNCTION**

This matter was submitted on briefs, on the motions of the Plaintiff, State of West Virginia ex rel. Patrick Morrissey, Attorney General (“State” or “Attorney General”), to Deem Requests for Admission Admitted and for Summary Judgment (“Motions”). Defendant, Glenn A. Naylor II, individually and doing business as Naylor Monument Company, LLC, doing business as Naylor Monument Memorial Sales, and doing business as Naylor Monument Company (collectively, “Defendant”) did not submit anything to the Court although notice of the hearing was served on him.

In consideration of the Motions, the State’s memorandum in support and filed affidavits in support of the Motions, the Court finds the State’s Motions are well taken, the Request for Admissions are deemed admitted and summary judgment shall be granted. The Defendant shall be permanently enjoined from conducting any business involving the advertising, sale, construction,

engraving, delivery and installation of monuments, memorials, gravestones or other goods (collectively “memorials”) related to memorials in West Virginia in accordance with the following.

I. FINDINGS OF FACT

A. Procedural Facts

Prior to June 2023, the State received several consumer complaints against the Defendant. Consumers complained that the Defendant was paid to make, engrave, deliver, and install memorials, but had failed to make, engrave, deliver and install the memorials in spite of having been paid in full. In the fall of 2022, the Attorney General’s office commenced an investigation to determine if Defendant was violating the West Virginia Consumer Credit and Protection Act (the “Act”). W. Va. Code §§ 46A-1-101 *et seq.* Although the Defendant resolved some complaints, the Attorney General’s office continued to receive more complaints against the Defendant.

Defendant was personally served with a copy of this lawsuit on June 22, 2023. Although the Defendant did not file a formal answer, the State received a letter from the Defendant on July 9, 2023, that appears to be an answer to the complaint. A copy of the letter was filed with the Court.

Thereafter, the State served the Defendant with Plaintiff’s First Request for Production of Documents on September 15, 2023. Although Defendant advised the State he would respond to the discovery request, he has not. Subsequently, the State served the Defendant with Plaintiff’s First Request for Admissions on January 22, 2024. Naylor has not responded to the Request for Admissions.

B. Substantive Facts

Since Defendant did not respond to the State’s First Request for Admissions, he has admitted the following facts.

Defendant is the sole proprietor of Naylor Monument Company, Naylor Monument Company LLC, and Naylor Monument Memorial Sales. Plaintiff's First Request for Admissions, RFA ¶ 4. He operates his business from 116 Slack Branch Road in Kanawha County, but also sells monuments at different locations including funeral homes and another monument business in Kanawha County, Kessel Monument Sales. The State submitted several affidavits from consumers and one from a paralegal with the Attorney General's office. The affidavits are uncontested by Defendant and confirm the amounts owing to specific consumers by Defendant. RFA ¶¶ 5 – 61.

The State admits that Naylor resolved a few complaints but contends through the Request for Admissions and the affidavits that 25 complaints are unresolved. The total amount owing to consumers by Defendant is \$78,851.44. *See*, Affidavit of Erica Kaylor attached as Exhibit D to the State's memorandum in support totaling the amounts owing as indicated in the Request for Admissions and consumer affidavits.

Consumers generally complain about purchasing headstones and other memorials that have never been delivered or installed. They complain about engravings on memorials that have been paid for, but never performed. And, they complain about incorrect engravings that cannot be repaired or incorrect memorials that were installed or memorials that were installed without all the features. Affidavits supporting these complaints were submitted by Ethel Withrow, Cheryl Rhodes, Tina Armentrout, Mary Jane Morris, Artie Hoover, Angela Cavender, Scott Neil, Billie Huffman, John Hlucky, and Gloria Kelsey. *See* Affidavits attached to the State's memorandum in support, Exhibits E – N and RFAs ¶¶ 5 - 61.

II. CONCLUSIONS OF LAW

A. **Motion To Deem Requests For Admission Admitted**

Under the West Virginia Rules of Civil Procedure, when a party fails to respond to requests for admission, the Court may deem the requests admitted. *Checker Leasing, Inc. v. Sorbello*, 382 S.E.2d 36, Syl. pt. 2 (W. Va. 1989). “Under Rule 36(a) of the West Virginia Rules of Civil Procedure, if a court determines that an answer does not comply with the requirements of the rule, it may order either that the matter is admitted or that an amended answer be served.” *Id.*, 382 S.E.2d at Syl. pt. 3. Defendant was served with a Request for Admissions on January 22, 2024. He has had more than three months to respond to the requests but failed to do so. Thus, the admissions in the State’s Request for Admissions are deemed admitted. *Checker Leasing, Inc. v. Sorbello*, 382 S.E.2d 36, Syl. pt. 2 (W. Va. 1989).

B. **Summary Judgment and Injunctive Relief**

Summary judgment is appropriate when there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law. *Reed v. Orme*, 655 S.E.2d 83, Syl. pt. 2 (W. Va. 2007). If the record taken as a whole cannot lead a rational trier of fact to find for the nonmoving party, summary judgment must be granted. *Parker v. Estate of Bealer*, 656 S.E.2d 129, 132 (W. Va. 2007) (quoting *Williams v. Precision Coil, Inc.*, 459 S.E.2d 329, 338 (1995) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-8 (1986))).

Although the Court must view the facts and all permissible inferences from them in the light most favorable to the nonmoving party, that party must nonetheless offer some concrete evidence from which a reasonable fact finder could return a verdict in its favor. *Painter v. Peavy*, 451 S.E.2d 755, 759 (W. Va. 1994), (citing *Anderson v. Liberty Lobby, Inc. supra*). Defendant failed to respond at all. Thus, summary judgment should be granted. Motions for summary judgment are appropriate in consumer protection cases when there is no genuine issue of material

fact, and the State is entitled to judgment as a matter of law. *See, e.g., State ex rel. McGraw v. Imperial Marketing*, 506 S.E.2d 799 (W. Va. 1998) (upholding summary judgment for the Attorney General in a consumer case); *U.S. Life Credit Corp. v. Wilson*, 301 S.E.2d 169 (W. Va. 1982) (remanding for entry of summary judgment for consumer).

1. Judgment is Appropriate

No genuine issue of material fact exists. The Defendant failed to respond to the State's First Request for Admissions which was properly served January 22, 2024. W. Va. R. Civ. P. 36(a). The Request For Admissions asked the Defendant to admit the allegations of the complaint. Since the Defendant is deemed to have admitted the allegations of the Complaint, there is no genuine issue of any material fact, and the State is entitled to judgment as a matter of law. W. Va. R. Civ. P. 56. Moreover, in the Defendant's letter to the Attorney General, he admitted some of the allegations as well (admitting he owed Cheryl Rhodes \$5,508.85 and needed to re-do a headstone for Lazenda Smith).

Additionally, ten consumers submitted affidavits regarding their transactions with the Defendant. Defendant made no effort to refute the sworn statements of the consumers.

2. Defendant Engaged in Unfair or Deceptive Acts or Practices

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

W. Va. Code § 46A-6-104.

'Unfair methods of competition and unfair or deceptive acts or practices' means and includes, but is not limited to, any one or more of the following: . . . (I) Advertising goods or services with intent not to sell them as advertised. . . (L) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding; . . . and (M) The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment,

suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby;

W. Va. Code § 46A-6-102(7)(I), (L), (M).

Defendant's unfair or deceptive acts or practices in the conduct of his memorial business include:

- a. Advertising memorial construction, engraving and installation services with the intent not to sell them as advertised, W. Va. Code § 46A-6-102(7)(I);
- b. Failure to complete contracts as represented, W. Va. Code § 46A-6-102(7)(L);
- c. Failure to provide an estimated completion date for the contract. W. Va. Code § 46A-6-102(7)(L);
- d. Failure to provide, or substantially provide, goods and services as promised in Defendant's contracts, W. Va. Code § § 46A-6-102(7)(I), (L), and (M);
- e. Using false promises to induce West Virginia consumers into purchasing memorials or engraving services, W. Va. Code §§ 46A-6-102(7)(I), (L), and (M);
- f. Misrepresenting to consumers when memorials would be delivered and installed, W. Va. Code §§ 46A-6-102(7)(I), (L), and (M).

Each unfair or deceptive act or practice noted above violates the Act. W. Va. Code § 46A-6-104. Thus, Defendant must be permanently enjoined from engaging in this unlawful conduct.

3. Equitable Relief is Appropriate

a. Permanent Injunction

The primary relief available in a suit by the Attorney General under the Act is equitable in nature. West Virginia Code § 46A-7-108 authorizes the Attorney General to bring a civil action "to restrain a person from violating [the Act] and for other appropriate relief." W. Va. Code § 46A-7-108. The Court has the authority to prevent Defendant from engaging in any business with

consumers in the State of West Virginia. *State ex rel. McGraw v. Imperial Marketing*, 506 S.E.2d 799 (W. Va. 1998).

In *Imperial Marketing*, the West Virginia Supreme Court of Appeals considered the remedies available to the Attorney General under W. Va. Code §§ 46A-7-108 and -110 in a suit based on violations of the West Virginia Prizes and Gifts Act (unfair or deceptive direct mail advertisements), a subsection of the Act. W. Va. Code §§ 46A-6D-1, *et seq.* The State argued that equitable relief, including injunctive relief and restitution was authorized by W. Va. Code § 46A-7-108. The Supreme Court of Appeals agreed.

[W]e find compelling the reasoning of the Attorney General that the use of the phrase “other appropriate relief” in W. Va. Code § 46A-7-108 [1974], “indicates that the legislature meant the full array of equitable relief to be available in suits brought by the Attorney General.”

Imperial Marketing, 506 S.E.2d at 811-12. Thus, the Court will order appropriate equitable relief. Moreover, since the public interest is involved, those powers are even broader and more flexible than when only a private controversy is at stake. *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946).

The State requests the Court order Defendant be permanently enjoined from operating any memorial business in West Virginia as a sole proprietor, as a partner, or as a majority owner of any limited liability company or corporation. The Court finds the requested relief is appropriate. W. Va. Code § 46A-7-108.

b. Restitution and Civil Penalties

The State also seeks an order for restitution and civil penalties in its Motions.

1. Restitution

This Court has the authority to award restitution for aggrieved consumers. *State of West Virginia. State ex rel. McGraw v. Imperial Marketing*, 506 S.E.2d 799 (W. Va. 1998).

In *Imperial Marketing*, the West Virginia Supreme Court of Appeals the Court affirmed a permanent injunction and consumer restitution imposed by the trial court under W. Va. Code § 46A-7-108. *State ex rel. McGraw v. Imperial Marketing*, 506 S.E.2d 799 (W. Va. 1998). The trial court ordered the defendant (1) to offer full refunds to all consumers who purchased goods in response to the unlawful solicitations and (2) to pay the full cost of the consumer refund program. The defendant argued that the lower court could not award consumer restitution. *Id.* at 811. The Court upheld the refund program:

[W]e find compelling the reasoning of the Attorney General that the use of the phrase “other appropriate relief” in W. Va. Code § 46A-7-108 [1974], “indicates that the legislature meant the full array of equitable relief to be available in suits brought by the Attorney General.”

Id. at 811-12. Therefore, the Court may order any equitable relief that is appropriate including consumer restitution.

A judgment in favor of the State for restitution to be paid to aggrieved consumers is justified. Restitution for those who have been deceived into paying Defendant money for goods and services not delivered is warranted. The Court shall award the State a judgment in the amount of \$78,851.44 to be paid to aggrieved consumers as set forth in the State’s exhibits to its Memorandum of Law in Support of its Motion for Summary Judgment.

2. Civil Penalties

Willful and repeated violations of the Act subject the Defendant to civil penalties of up to \$5,000.00 per violation. W. Va. Code § 46A-7-111(2).

The Attorney General reports that significant penalties have been awarded in consumer protection cases. In *CashCall, Inc. v. Morrissey*, 2014 WL 2404300 (W.Va. 2014), the West Virginia Supreme Court of Appeals affirmed \$3 million in civil penalties imposed on a lender for violating the Act due to unlawful debt collection activities, unlicensed business operations, and

making usurious loans to 292 consumers. *CashCall*, 2014 WL 2404300 at *5, *7. Thus, the company was penalized almost three times the amount of money actually loaned, about \$1.2 million. *CashCall*, 2014 WL 2404300 at *8. In the present case, Defendant willfully and repeatedly took money from consumers and did not deliver the goods or services.

The Supreme Court of Appeals affirmed maximum penalties available in another consumer protection case. In *Williamson v. Morrissey*, 2020 WL 6747025 (W.Va. 2020), Williamson was part of a scheme to purportedly settle debts for consumers for less than what was owing. *Williamson*, 2020 WL 6747025, at *1. The *Williamson* trial court found that the debt settlement program was little more than a “ruse” perpetrated by the true debt settler. *Williamson*, 2020 WL 6747025, at *4. For Williamson’s conduct in the ruse, the trial court imposed civil penalties under the Act in the total amount of \$1,225,000.00 based on a maximum \$5,000 penalty for each of the 245 consumers victimized by Williamson and others. *Williamson*, 2020 WL 6747025, at *4. The Supreme Court of Appeals affirmed the decision. *Williamson*, 2020 WL 6747025, at *7. Imposing civil penalties against Defendant for his violations of the Act is appropriate and consistent with West Virginia Supreme Court of Appeals rulings.

Therefore, the Court will impose civil penalties of \$5,000 per transaction or consumer victimized, in the total amount of \$125,000.00.

THEREFORE, in consideration of the pleadings, lack thereof, motions, supporting memoranda, submitted documents and affidavits, the Court hereby grants the State’s motion for summary judgment; and further

ORDERS that the admissions in the States’ Request for Admissions are deemed admitted; and further

ORDERS that the Plaintiff’s Motion for Summary Judgment is granted; and further

ORDERS that Defendant is hereby permanently enjoined and restrained from engaging in any memorial business activity in the State of West Virginia, whether individually, as a sole proprietor, in a partnership, or as a principal owner of a limited liability company or corporation; and further

ORDERS that Defendant is permanently enjoined and restrained from engaging in unfair or deceptive acts or practices in violation of the West Virginia Consumer Credit and Protection Act, W. Va. Code §§ 46A-1-101 et seq.; and further

ORDERS that judgment for restitution is entered against Glenn A. Naylor, II and in favor of the State in the amount of \$78,851.44. In the event that the Attorney General collects all or part of this judgment amount, the Attorney General is Ordered to pay this amount to aggrieved consumers, pro rata, at the Attorney General's discretion and convenience; and further

ORDERS that judgment is entered against Glenn A. Naylor, II and in favor of the State in the amount of \$125,000.00 in civil penalties, being one civil penalty at the maximum amount of \$5,000.00 for each of the 25 consumer transactions Glenn A. Naylor, II entered into and failed to provide the promised goods and services. Any sums collected by the State on the civil penalty judgment shall be placed in the West Virginia Consumer Protection Fund, an account held by the West Virginia State Treasurer, and may be used by the Attorney General for any one or more of the following purposes: direct and indirect administrative, investigative, compliance, enforcement, or litigation costs and services incurred for consumer protection purposes; to be held for appropriation by the Legislature; and/or distribution to taxpayers and/or consumers; and further

ORDERS that all money the Attorney General collects under the terms of this Order shall first be applied to the judgment for restitution until the judgment is satisfied, and next to satisfying the judgment for civil penalties.

The Clerk is hereby Ordered to send a certified copy of this Order to counsel of record as addressed below and to the Defendant at his last known address: 116 Slack Branch Road, Charleston, WV 25045.

It is further Ordered that this matter be stricken from the Court's active docket.

IT IS SO ORDERED

ENTERED 7/9/2024



Kenneth D. Ballard, Judge, 13th Judicial Circuit
Kanawha County Circuit Court

Prepared by:

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