

STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

STATE OF OHIO

IN THE MATTER OF:
U.S. RESTORATION &
REMODELING, INC.

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DOCKET NO. 442334

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance ("Assurance") is entered into this 18 day of September, 2013 between U.S. Restoration & Remodeling, Inc. ("US Restoration"), and the Attorney General of the State of Ohio ("Attorney General"). For purposes of this Assurance, "US Restoration" means U.S. Restoration & Remodeling, Inc., doing business under its own name or under any other business name, its agents, representatives, salespersons, employees, instructors, independent contractors, successors and assigns, and all persons acting in concert or participation with US Restoration, directly or indirectly, through any corporate device, partnership or association within the State of Ohio.

WHEREAS, the Attorney General, having reasonable cause to believe that US Restoration has engaged in acts and practices which violate Chapter 1345 of the Revised Code ("Consumer Sales Practices Act") and Chapter 109:4-3 of the Ohio Administrative Code ("Substantive Rules"), has conducted an investigation pursuant to the authority granted him by Section 1345.06 of the Revised Code; and

WHEREAS, the Attorney General may, pursuant to R.C. 1345.06(f), enter into and accept an Assurance of Voluntary Compliance; and

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WHEREAS, this Assurance of Voluntary Compliance is an assurance in writing by US Restoration of its intent to comply with the provisions of the Consumers Sales Practices Act and the Substantive Rules; and

WHEREAS, US Restoration desires to comply with all aspects of the Consumer Sales Practices Act, US Restoration hereby voluntarily enters into this Assurance with the Attorney General; and.

WHEREAS, by entering into this Assurance, US Restoration does not admit liability or guilt to any allegation made by the Attorney General; and

WHEREAS, pursuant to R.C. 1345.06(F), this Assurance is not evidence of a violation by US Restoration of the provisions of the Consumer Sales Practices Act, the Substantive Rules, or the Home Solicitation Sales Act.

NOW THEREFORE, in consideration of the mutual promises and conditions set forth herein, the parties hereto **AGREE** as follows:

- (1) The "Effective Date" shall mean the date indicated on the first page of this Assurance.
- (2) By accepting this written Assurance, the Attorney General agrees to terminate the current investigation of US Restoration's business practices and actions occurring on or before the Effective Date of this Assurance.
- (3) By giving this written Assurance, US Restoration agrees to comply with all the terms of this Assurance and to conduct its business in compliance with all applicable Ohio laws, including without limitation, the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq., the Substantive Rules, Ohio Administrative Code, Section 109:4-3 et seq., and Ohio's Home Solicitation Sales Act ("HSSA"), R.C. 1345.21 et seq.

BACKGROUND AND STATEMENT OF FACTS

- (4) US Restoration is an Ohio corporation with its principal place of business located at 6797 North High Street, #219, Worthington, Ohio 43085.
- (5) US Restoration is a "supplier" as that term is defined in R.C. 1345.01(C) as US Restoration has been, at all times relevant herein, engaged in the business of effecting consumer transactions by soliciting, offering for sale and selling home improvement goods, repairs and services to individual consumers in the State of Ohio, including Franklin County, for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).
- (6) US Restoration is a "seller" engaged in the business of conducting "home solicitation sales" as those terms are defined in R.C. 1345.21(A) and (C), respectively, as US Restoration has been, all times relevant herein, engaged in the solicitation and sale of home improvement goods, repairs and services to "buyers," as that term is defined in R.C. 1345.21(D), at their personal residences in Franklin County and various other Ohio counties for purposes that were primarily personal, family, or houseful within the meaning specified in R.C. 1345.21(E).
- (7) Although US Restoration maintains a business establishment having a fixed permanent location, US Restoration routinely engages in sales presentations and contracts for work at consumers' residences.
- (8) US Restoration solicits individual consumers to enter into consumer transactions, specifically by advertising, offering for sale, and selling home improvement goods, repairs and services, specifically roof repair work.

- (9) US Restoration conducts home solicitation sales and enters into contracts with consumers in connection with home improvement goods, repairs and services.
- (10) US Restoration has made representations and claims, both orally and in writing, regarding the cost to the consumer for home improvement goods, repairs and services contracted for with US Restoration.
- (11) Specifically, US Restoration has represented to consumers that all costs would be covered by the consumers' insurance, excluding any applicable insurance deductible required to be paid by the consumer(s), any additional work agreed upon between US Restoration and the consumers which is not covered under the consumers' insurance, and/or any additional, unforeseen, but necessary repairs or services to comply with local building or zoning code requirements.
- (12) Believing such representations and claims to be true, certain consumers contracted with US Restoration for various home improvement goods, repairs and services.
- (13) US Restoration's contracts contain language which states that they are "authorized to perform at their discretion all insurance prescribed repairs for the price of the full scope of the insurance proceeds," but the contracts do not state what the amount, or estimated amount, of those proceeds will be.
- (14) US Restoration's contracts contain language which states that "[t]he final price agreed on between the insurance company and THE COMPANY shall become the final contract price of full scope of insurance proceeds." By including such language in its contracts, U.S. Restoration has the ability to negotiate with the insurance company to ensure its customers receive all repairs they are entitled to receive under their insurance policy. Thus, in some instances the final contract price is not determined based upon U.S.

Restoration's initial repair estimate, but is based upon what the insurance company eventually approves for repair.

- (15) In some instances, US Restoration has told the consumer the contract price would be one amount, but then later attempted to collect additional fees from the consumer because the consumer received supplemental funds from their insurance company – fees that were not part of the insurance company's original quote for replacement cost proceeds because the insurance company either failed to include or underestimated necessary repairs and services covered under the consumer's insurance policy, but such necessary repairs and services were completed by U.S. Restoration.
- (16) US Restoration's contracts contain a "Mechanics Lien" provision which states that "[t]he Company reserves the right to a mechanics lien of the Customer/Buyer's property if the Customer/Buyer fails to make timely payments to the Company for the work performed."
- (17) In one instance, US Restoration caused a mechanic's lien to be placed on a consumer's property when the consumer had never contracted with US Restoration. It had been the consumer's son – with the same name – that had contracted with US Restoration. It was not until the consumer complained to the Attorney General's Office did US Restoration learn of its mistake and took immediate steps to remove the lien.

**ATTORNEY GENERAL'S ADDITIONAL ASSERTIONS OF FACT
WHICH ARE DISPUTED BY US RESTORATION**

- (18) In some instances, US Restoration has accepted payments from consumers' insurance companies for the purchase of home improvement goods, repairs and services, but on certain occasions has failed to deliver the goods and/or perform the repairs or services for which the consumers' insurance companies paid for.

- (19) In some instances, US Restoration has failed to begin and/or complete the home improvement services for which consumers contracted.
- (20) In some instances, US Restoration has represented that repairs or services would be completed within a specific time and did not complete such repairs and services within such time-frame.
- (21) In some instances, US Restoration has performed shoddy and unworkmanlike services in connection with its home improvement business and has failed to correct such work.
- (22) In some instances, US Restoration has provided consumers with inconsistent and inadequate information pertaining to the timeline for the work contracted for and completion of the work contracted for.

COMPLIANCE PROVISIONS

- (23) In connection with the advertising and sale of all home improvement goods, repairs and services, US Restoration shall comply with the CSPA, R.C. 1345.01 et seq., and the Substantive Rules enacted thereunder.
- (24) In connection with the advertising and sale of all home improvement goods, repairs and services, US Restoration shall comply with the HSSA, R.C. 1345.21 et seq.
- (25) In connection with the advertising and sale of all home improvement goods, repairs and services, US Restoration shall refrain from:
 - (A) Committing an unfair or deceptive act or practice in connection with a consumer transaction, in violation of the CSPA, R.C. 1345.02(A);
 - (B) Committing an unconscionable act or practice in connection with a consumer transaction, in violation of the CSPA, R.C. 1345.03(A);

- (C) Performing shoddy and unworkmanlike services in connection with a consumer transaction and then failing to correct such work, in violation of the CSPA, R.C. 1345.02(A);
- (D) Failing to respond to consumer inquiries and failing to give consumers accurate information related to delivery and service dates, the completion of work, and the consumer's cancellation rights, in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.03(A);
- (E) Committing an unconscionable act or practice in connection with a consumer transaction by entering into a consumer transaction on terms US Restoration knows are substantially one-sided in their favor, in violation of the CSPA, R.C. 1345.03(A), as set forth by R.C. 1345.03(B)(5);
- (F) Committing an unconscionable act or practice in connection with a consumer transaction by making a misleading statement of opinion on which the consumer is likely to rely to the consumer's detriment, in violation of the CSPA, R.C. 1345.03(A), as set forth by R.C. 1345.03(B)(6);
- (G) Failing to disclose the cost, or estimated cost, of the home improvement goods, repairs and/or services that they are contracting to provide to consumers, in violation of the Repairs or Services Rule, Ohio Admin. Code 109:4-3-05, and the CSPA, R.C. 1345.02(A);
- (H) Representing that repairs or services are necessary when such is not the fact, in violation of the Repairs or Services Rule, Ohio Admin. Code 109:4-3-05(B)(8), and the CSPA, R.C. 1345.02(A);

- (I) Representing that repairs have been made or services have been performed when such is not the fact, in violation of the Repairs or Services Rule, Ohio Admin. Code 109:4-3-05(B)(9), and the CSPA, R.C. 1345.02(A);
- (J) Materially understating or misstating the estimated cost of the repair or service, in violation of the Repairs or Services Rule, Ohio Admin. Code 109:4-3-05(B)(11), and the CSPA, R.C. 1345.02(A);
- (K) Accepting payments for home improvement goods or services and then permitting eight weeks to elapse without delivering the goods or performing the services, making a full refund of the payments, or advising the consumer of the duration of an extended delay and offering to send the consumer a refund within two weeks if the consumer so requests, in violation of the Failure to Deliver Rule, Ohio Admin. Code 109:4-3-09, and the CSPA, R.C. 1345.02(A);
- (L) Committing an unfair or deceptive act or practice in connection with a consumer transaction, in violation of the HISSA, R.C. 1345.21 et seq.;
- (M) Failing to give proper notice to buyers of their right to cancel their contract by a specific date, in violation of the HISSA, R.C. 1345.22 and R.C. 1345.02(A);
- (N) Failing to disclose to buyers and to incorporate directly or by reference into the purchase contract all material terms and conditions of any financing agreements, prior to the commencement of the three-day right to cancel, in violation of the HISSA, R.C. 1345.23 and R.C. 1345.02(A); and
- (O) Misrepresenting the buyer's right to cancel, in violation of the HISSA, R.C. 1345.23(D)(3) and R.C. 1345.02(A).

- (26) In connection with the advertising and sale of all home improvement goods, repairs and services, and before attempting to place or have placed a mechanic's lien on any consumer's property, US Restoration shall ensure that it is in compliance with Ohio's mechanic's lien statute, R.C. 1311.01 et seq.
- (27) In connection with the advertising and sale of all home improvement goods, repairs and services, and before attempting to place or have placed a mechanic's lien on any consumer's property, US Restoration shall ensure that it possesses written documentation that supports that the lien is being placed on the correct property for the consumer party to the contract and not on the property of any other individual who is not party to the contract and to whose property the work was not performed upon. If US Restoration causes a mechanic's lien to be placed on the wrong property and/or for the wrong consumer, US Restoration will take immediate steps to remove the improper lien as soon as the company is informed of the improper lien.

GENERAL PROVISIONS

- (28) US Restoration understands and agrees this Assurance applies to US Restoration, doing business under its own name and to any other business name, its principals, officers, directors, agents, representatives, salespersons, employees, instructors, independent contractors, successors and assigns, jointly and severally.
- (29) This Assurance shall be governed by the laws of the State of Ohio.
- (30) This Assurance does not constitute an approval by the Attorney General of any of US Restoration's business practices and US Restoration shall not represent directly or indirectly, or in any way whatsoever, that the Attorney General has sanctioned, condoned or approved any part or aspect of US Restoration's business practices.

- (31) This Assurance sets forth the entire agreement between the Attorney General and US Restoration (the "Parties") and supersedes all prior agreements or understandings, whether written or oral, between the Parties and/or their respective counsel with respect to the subject matter hereof. This Assurance may be amended by written agreement between the Parties, subject to any further requirements under state law.
- (32) The Parties acknowledge that no other promises, representations or agreements of any nature have been made or entered into by the Parties. The Parties further acknowledge that this Assurance constitutes a single and entire agreement that is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable, the remaining provisions shall continue in full force and effect.
- (33) Irrespective of US Restoration's obligations under Paragraph (35) below, US Restoration shall continue to negotiate in good faith, and resolve, through the office of the Attorney General, any consumer complaints filed with the Ohio Attorney General's Office, concerning US Restoration's conduct occurring prior to or after the Effective Date of this Assurance, which are brought by consumers that are discovered after entering into this Assurance.
- (34) This Assurance is a public record and shall be maintained in the Public Inspection File.

RESTITUTION AND PAYMENT TO THE STATE

- (35) US Restoration shall provide refunds to consumers who complain to the Ohio Attorney General's Office regarding US Restoration within the next sixty (60) calendar days following the Effective Date of this Assurance, pursuant to the following terms:
- (A) The Attorney General shall provide to US Restoration copies of consumer complaints which are filed with the Attorney General's Office within sixty (60)

calendar days after the Effective Date of this Assurance and which complaints arose within the applicable statute of limitations period preceding the Effective Date of this Assurance. Within thirty (30) calendar days following the sixty-day period prescribed above, the Attorney General's Office shall provide to US Restoration copies of these consumer complaints, along with a list of the consumer restitution amounts the Attorney General's Office maintains is owed to each consumer, or a request for additional contract and/or payment information from US Restoration.

(B) US Restoration shall provide to the Attorney General's Office any additional information requested under Paragraph (35)(A) within seven (7) calendar days of the date that the Attorney General's Office makes the initial request to US Restoration. If US Restoration disputes the allegations noted in any consumer complaint provided under Paragraph (35)(A), US Restoration shall, within the seven-day period referenced above, notify the Attorney General's Office of that dispute and shall provide substantiating information and/or documents in support of its position. The Attorney General's Office will then have seven (7) additional calendar days to supplement or modify the original list of consumer restitution amounts provided to US Restoration pursuant to Paragraph (35)(A). The Parties will then have seven (7) calendar days from the date US Restoration receives the modified restitution list to agree upon the amount of consumer restitution applicable. If US Restoration disputes the allegations noted in any consumer complaint and/or any applicable restitution amount requested by the Attorney General's Office, the Parties expressly agree to engage in good faith

negotiations, with a commitment towards a resolution of any dispute(s) within seven (7) calendar days from the date US Restoration receives the modified restitution list and the applicable restitution amounts from the Attorney General's Office.

- (C) US Restoration shall pay to the Attorney General's Office the total amount due to all of the consumers identified pursuant to Paragraphs (35)(A) and (35)(B) within fourteen (14) calendar days of the date that the Parties agree upon the amount of consumer restitution due pursuant to Paragraph (35)(B). The Attorney General's Office shall then distribute the payments to the individual consumers. Payment by US Restoration shall be made by delivering a certified check or money order, payable to the "Ohio Attorney General's Office," to:

**Teresa Goodridge
Financial Assistant
Consumer Protection Section
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215**

- (36) As part of the consideration for the termination of the Attorney General's investigation of US Restoration's business practices under the CSPA, R.C. 1345.01 et seq., US Restoration shall pay Twenty-Five Thousand Dollars (\$25,000.00) to the Office of the Ohio Attorney General to be placed in the Consumer Protection Enforcement Fund of the Ohio Attorney General's Office, of which Twenty-Three Thousand Dollars (\$23,000.00) shall be suspended upon full and complete compliance with the terms of this Assurance. The remaining payment of Two Thousand Dollars (\$2,000.00) shall be due upon the Effective Date of this Assurance and shall be made by delivering a certified check or money order, made payable to the "Ohio Attorney General's Office," to:

Teresa Goodridge
Financial Assistant
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215

PENALTIES FOR FAILURE TO COMPLY

- (37) The Attorney General may assert any claim that US Restoration has violated this Assurance in a separate civil action to enforce this Assurance, or to seek any other relief afforded by law, including attorney fees, investigative costs, payment of the suspended Twenty-Three Thousand Dollars (\$23,000.00) in Paragraph (36) above, and a civil penalty of not more than \$25,000.00, as set forth in R.C. 1345.07(D), for each separate and appropriate violation the Attorney General asserts US Restoration has committed. In any such action or proceeding, relevant evidence of conduct that occurred before the Effective Date shall be admissible on any material issue, including alleged willfulness, intent, knowledge, contempt or breach, to the extent permitted by law. By this paragraph, US Restoration does not waive any evidentiary objection or any other objection it may have as permitted by law to the admissibility of any such evidence.
- (38) Evidence of a violation of an Assurance of Voluntary Compliance is prima-facie evidence of an act or practice in violation of the CSPA, R.C. 1345.01 et seq., if presented after the violation in an action brought under the CSPA, R.C. 1345.01 et seq.
- (39) This Assurance shall in no way exempt US Restoration from any other obligations imposed by law, and nothing contained herein shall relieve US Restoration of any legal responsibility for any acts or practices engaged in by US Restoration other than those acts specifically resolved by this Assurance.

(40) Nothing in this Assurance shall in any way preclude any investigative or enforcement action against US Restoration under any legal authority granted to the Attorney General:

(A) With respect to the transactions or occurrences which are the subject of this enforcement action, if the terms of this Assurance are not fully obeyed; or

(B) With respect to transactions or occurrences which are not the subject of this action.

WHEREFORE, the parties hereto affix their signatures in recognition and acceptance of the terms contained herein on this 18 day of September 2013.

SIGNATURES

Accepted:


MICHAEL DEWINE
OHIO ATTORNEY GENERAL

BY: 
MELISSA G. WRIGHT (0077843)
Associate Assistant Attorney General
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215
(614) 466-8169; (866) 528-7423 (facsimile)
melissa.wright@ohioattorneygeneral.gov

Date 9/20/13

Accepted:

U.S. RESTORATION & REMODELING, INC.
(Authorized Representative)

BY: 
DANIEL SECURIEST
President and Treasurer
6797 N. High Street, #219
Worthington, Ohio 43085
(614) 888-4245; (614) 430-3696

Date 9-18-13

Accepted:

COUNSEL FOR U.S. RESTORATION & REMODELING, INC.

BY: 
JAMES P. TYACK (0072945)
RYAN L. THOMAS (0084828)
Tyack, Blackmore & Liston Co., L.P.A.
536 S. High Street
Columbus, Ohio 43215
(614) 221-1341; (614) 228-0253 (facsimile)
jptyack@tblattorneys.com
rthomas@tblattorneys.com

Date 9/18/13