

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH _____

FOND DU LAC COUNTY

STATE OF WISCONSIN
17 West Main Street
P.O. Box 7857
Madison, Wisconsin 53707-7857,

Plaintiff,

v.

MARK F. STITT
185 Marlin Circle
Panama City, FL 32408, *13CX2A*

and

ES TECHNOLOGY LLC
3900 West Brown Deer Road
Suite A-204
Milwaukee, Wisconsin 53209, *13CX2B*

Defendants.

Case No. 13-CX-*2A*
13CX2B
Complex Forfeiture: 30109

FILED

APR 24 2013

RAMONA M. GEIB
FOND DU LAC COUNTY, WIS.
Clerk Of Circuit Court

ASSIGNED JUDGE
DALE L. ENGLISH

COMPLAINT

The State of Wisconsin ("State"), by its attorneys, Attorney General J.B. Van Hollen and Assistant Attorney General John S. Greene, on behalf of the Wisconsin Department of Justice and the Wisconsin Department of Agriculture, Trade and Consumer Protection ("DATCP"), brings this action against the defendants and alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff, State of Wisconsin, brings this action pursuant to Wis. Stat. §§ 100.18(11)(d) and 100.20(6) to enforce and restrain violations of Wis. Stat. § 100.18(1), and

Wis. Admin Code Ch. ATPC 127, and to recover pecuniary losses suffered by Wisconsin consumers.

2. Personal jurisdiction over defendant Stitt is present pursuant to Wis. Stat. § 801.05(3) because the acts or omissions giving rise to Plaintiff's claims took place within the State of Wisconsin; personal jurisdiction over defendant ES Technology LLC is present pursuant to Wis. Stat. § 801.05(1)(c) because it is a domestic limited liability company.

3. Venue is proper in Fond du Lac County because some of the violations took place in Fond du Lac County.

PARTIES

4. Plaintiff, State of Wisconsin, is a sovereign state of the United States of America with its principal offices at the State Capitol in Madison, Wisconsin.

5. Defendant Mark F. Stitt ("Stitt") is an adult whose last known address is 185 Marlin Circle, Panama City, Florida 32408.

6. Stitt has sold attic insulation products in Wisconsin beginning in 2008, through three limited liability companies: Energy 1 LLC; First Energy LLC; and ES Technology LLC. He served as the chief executive officer of all three entities.

7. Energy 1 LLC was registered with the Wisconsin Department of Financial Institutions in May 2008 and its registration was revoked in November 2010.

8. First Energy LLC was registered with the Wisconsin Department of Financial Institutions in March 2010 and was administratively dissolved in June 2011.

9. Upon information and belief, Stitt orchestrated, controlled, was in a position to control and/or participated in the activities of Energy 1 LLC, First Energy LLC, and ES Technology LLC, including the violations of law alleged in this complaint.

10. Defendant ES Technology LLC (“ES Technology”) is a Wisconsin domestic business with its principal office at 3900 W. Brown Deer Rd., Suite A-204, Milwaukee, Wisconsin 53209. Its registered agent is defendant Stitt.

11. Reference in this complaint to “the defendants,” shall be assumed to mean the defendants Stitt or ES Technology, or the principals, officers, employees, agents, representatives, or other persons acting under the supervision, direction or control of ES Technology, Energy 1 LLC, or First Energy LLC.

FACTUAL ALLEGATIONS

12. Defendants engaged in the business of selling and installing attic insulation products to Wisconsin residents, upon information and belief, from May 2008 until July 2011.

13. The product defendants sold, ProGuard AB, is a foil insulation product, consisting of a thin layer of fiberglass between two layers of foil.

14. Defendants regularly marketed their products and services to Wisconsin consumers through direct mail solicitations, namely postcards inviting consumers to attend a presentation on how to drastically lower their home energy bills.

15. At all times relevant to this complaint, defendants have been “sellers” under Wis. Admin. Code § ATCP 127.01(21).

16. At all times relevant to this complaint, defendants’ marketing activities have constituted “solicitations” under Wis. Admin. Code § ATCP 127.01(22).

17. Defendants’ solicitations constituted “mail solicitations” within the meaning of Wis. Admin. Code § ATCP 127.30(2).

18. Defendants’ mail solicitations represented that consumers would be able to save customers up to one third of the cost of their utility bills.

19. Defendant's mail solicitations urged potential customers "to attend a meeting which could ultimately save you hundreds and hundreds of dollars. GUARANTEED!!"

20. Defendants' mail solicitations did not disclose that they were offering or promoting goods or services for sale, or the nature of those goods or services.

21. At defendants' advertised meetings, which took place at various restaurants and other locations throughout Wisconsin, defendants solicited sales of ProGuard AB insulation.

22. Following the sales meetings, defendants visited the homes of interested consumers and, after taking measurements and providing a price quote, entered into sales contracts with consumers willing to purchase the product.

23. Defendants' meetings with potential customers, both at the sales meetings and at consumers' homes, were "face-to-face solicitations" within the meaning of Wis. Admin. Code § ATCP 127.60(1).

24. Defendants' sales transactions with Wisconsin consumers constituted "face-to-face transactions" within the meaning of Wis. Admin. Code § ATCP 127.60(2).

25. Defendants' solicitations targeted elderly consumers.

26. Upon information and belief, Wisconsin customers paid defendants between \$900.00 and \$4900.00 for ProGuard AB and its installation.

27. Upon information and belief, at defendants' sales meetings and in-home sales visits, defendants consistently misrepresented that consumers could substantially reduce their energy costs by installing ProGuard AB.

28. In reality, the ProGuard AB product has poor insulating properties.

29. In general, foil insulation products like ProGuard AB are not very effective in cold climates such as Wisconsin's. They are more effective in warm climates where there is a greater need to deflect—rather than retain—heat.

30. An inspector for the Department of Safety and Professional Services examined ProGuard AB insulation and estimated it to have an R-value of approximately 1. By contrast, standard 3½ inch fiberglass batting has an R-value of approximately 11.

31. An insulation product with an R-value of 1 cannot produce one-third savings on energy costs in Wisconsin.

32. Defendants did not provide any scientific basis for the claim that installing ProGuard AB could reduce energy costs by one-third.

33. In fact, ProGuard AB has failed to appreciably reduce consumers' energy bills, if at all.

34. Defendants guaranteed that consumers would be satisfied with ProGuard AB, and promised a refund if their energy savings did not pay for the cost of the product within three years of purchase.

35. Upon information and belief, defendants have failed to provide refunds as promised.

36. Multiple customers have filed complaints stating that defendants have made misrepresentations about the amount of savings on energy bills that would be realized following installation of ProGuard AB.

37. The defendants knew or should have known that in many instances the conduct described in this complaint was perpetrated against elderly persons.

VIOLATIONS OF LAW

Count I

(Misrepresentations – Wis. Stat. § 100.18(1))

38. The state incorporates by reference and realleges all preceding allegations.

39. On multiple occasions, defendants made untrue, deceptive or misleading statements or representations in the course of soliciting sales transactions, in violation of Wis. Stat. § 100.18(1). Specifically, defendants misrepresented that installation of ProGuard AB could result in significant energy savings to homeowners.

Count II

(Mail solicitations - Lack of disclosures – Wis. Admin. Code § ATCP 127.32)

40. The state incorporates by reference and realleges all preceding allegations.

41. Defendants sent Wisconsin consumers numerous mail solicitations that failed to disclose: (1) that the seller was offering or promoting the sale of consumer goods or services, and (2) the nature of the goods or services which the seller was offering or promoting, in violation of Wis. Admin. Code § ATCP 127.32(1)(b) and (c).

Count III

(Mail and Face-to-Face Transactions – Misrepresentations –
Wis. Admin Code §§ ATCP 127.44 & 127.72)

42. The state incorporates by reference and realleges all preceding allegations.

43. On multiple occasions, in the mail and face-to-face transactions described above defendants: (1) misrepresented the performance or efficacy of the goods or services offered or promoted in violation of Wis. Admin. Code §§ ATCP 127.44(5) & 127.72(5), and (2) made false, deceptive or misleading representations to, in violation of Wis. Admin. Code §§ ATCP 127.44(15) & 127.72(15).

DEMAND FOR RELIEF

WHEREFORE, Plaintiff, State of Wisconsin, demands relief against defendants as follows:

1. Enjoining the defendants, pursuant to Wis. Stat. §§ 100.18(11)(d) and 100.20(6), from further violations of law;
2. Ordering the defendants to provide refunds to affected customers, pursuant to Wis. Stat. §§ 100.18(11)(d) and 100.20(6);
3. Imposing upon the defendants civil forfeitures of not less than \$50 nor more than \$200 for each violation of Wis. Stat. § 100.18(1), pursuant to Wis. Stat. § 100.26(4), plus all applicable statutory assessments;
4. Imposing upon the defendants forfeitures of not less than \$100 nor more than \$10,000 for each violation of Wis. Admin. Code Ch. ATCP 127, pursuant to Wis. Stat. § 100.26(6), plus all applicable statutory assessments;

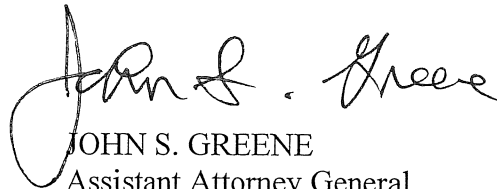
5. Imposing supplemental forfeitures not to exceed \$10,000 for each violation of Wis. Stat. §§ 100.18(1) committed against an elderly person, pursuant to Wis. Stat. § 100.264(2), plus all applicable statutory assessments;

6. Awarding the Department of Justice and the Department of Agriculture, Trade and Consumer Protection the expenses of investigation and prosecution, including attorneys fees, relating to enforcement of defendants' violations, pursuant to Wis. Stat. § 100.263; and

7. Awarding such other and further relief as this Court deems just and proper.

Dated this 22nd day of April, 2013.

J.B. VAN HOLLEN
Attorney General



JOHN S. GREENE
Assistant Attorney General
State Bar No. 1002897

Attorneys for State of Wisconsin

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-3936
(608) 267-2778 (Fax)
greenejs@doj.state.wi.us