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CIVIL DIVISION
MIDDLESEX COUNTY

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Deputy Attorney General



SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY
DOCKET NO.: MID-C- 30-14

JOHN J. HOFFMAN, Acting Attorney General
of the State of New Jersey and ERIC T.
KANEFSKY, Director of the New Jersey
Division of Consumer Affairs.

Civil Action

Plaintiffs,

v.

COMPLAINT

SCOTT FLOWERS' TOWING, INC. d/b/a
SCOTT'S TOWING; JANE AND JOHN
DOES 1-10, individually and as owners,
officers, directors, shareholders, founders,
managers, agents, servants, employees,
representatives and/or independent contractors
of SCOTT FLOWERS' TOWING, INC. d/b/a
SCOTT'S TOWING and XYZ
CORPORATIONS 1-10

Defendants.

Plaintiffs John J. Hoffman, Acting Attorney General of the State of New Jersey ("Attorney General"), and Eric T. Kanefsky, Director of the New Jersey Division of Consumer Affairs ("Director"), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, (collectively, "Plaintiffs"), by way of this Complaint state:

PRELIMINARY STATEMENT

1. Having your motor vehicle towed involuntarily can be a difficult, costly and even traumatic experience. It is particularly jarring for those consumers who park briefly in a shopping plaza or apartment complex only to find their motor vehicles gone when they return. This experience is exacerbated when consumers must pay exorbitant fees in order to get their motor vehicles back.

2. By enacting the Predatory Towing Prevention Act, N.J.S.A. 56:13-17 et seq. (“PTPA”), and its accompanying regulations, N.J.A.C. 13:45A-31.1 et seq. (“PTPA Regulations”), the State of New Jersey (“State” or “New Jersey”) recognized the need to protect consumers from unscrupulous towing practices. Among other things, the PTPA and the PTPA Regulations mandate that a company engaged in non-consensual towing meet certain requirements, which include the signage on private property warning of unauthorized parking as well as the fees charged for towing and/or storage.

3. Since at least 2012, Scott Flowers’ Towing, Inc., d/b/a Scott’s Towing (“Scott’s Towing” or “Defendant”) has engaged in predatory towing practices in violation of the PTPA and the PTPA Regulations. Among other violations, Scott’s Towing has (a) engaged in non-consensual private property towing without having contracts with the private property owners; (b) charged excessive towing and storage fees and (c) engaged in non-consensual private property towing in locations lacking proper signage. Scott’s Towing’s unscrupulous business practices contravene the express terms and purposes underlying the PTPA, the PTPA Regulations as well as the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”).

PARTIES AND JURISDICTION

4. The Attorney General is charged with the responsibility of enforcing the CFA, N.J.S.A. 56:8-1 et seq., the PTPA, N.J.S.A. 56:13-17 et seq., and the PTPA Regulations, N.J.A.C. 13:45A-31.1 et. seq. The Director is charged with the responsibility of administering the CFA, the PTPA and the PTPA Regulations on behalf of the Attorney General.

5. By this action, Plaintiffs seek injunctive and other relief for violations of the CFA, the PTPA and the PTPA Regulations. Plaintiffs bring this action pursuant to their authority under the CFA, specifically N.J.S.A. 56:8-8, N.J.S.A. 56:8-11, N.J.S.A. 56:8-13 and N.J.S.A. 56:8-19 as well as the PTPA, N.J.S.A. 56:13-21. Venue is proper in Middlesex County, pursuant to R. 4:3-2, because it is a county in which Scott's Towing has conducted business and in which the cause of action arose.

6. Scott's Towing is a corporation established in the State on April 4, 1988. At all relevant times, Scott's Towing has maintained a principal business address of 813 Rahway Avenue, Woodbridge, New Jersey 07095.

7. At all relevant times, Scott Flowers has been the owner and operator of Scott's Towing and has designated himself as its President.

8. Upon information and belief, John and Jane Does 1 through 10 are fictitious individuals meant to represent owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of Scott's Towing who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to the Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

9. Upon information and belief, XYZ Corporations 1 through 10 are fictitious corporations meant to represent any additional corporations that have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to the Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

A. The Division's Initial Investigation

10. Since at least 1988, Defendant has operated a towing company in the State and has engaged in the private property towing business.

11. On or about July 25, 2012, in response to a consumer complaint, the Division of Consumer Affairs ("Division") issued an Administrative Subpoena Duces Tecum ("Subpoena") to Defendant. Among other things, the Subpoena requested that Defendant produce all documents concerning its provision of towing services to private property owners from January 1, 2012 to the date of its response.

12. On or about August 2012, Defendant produced documents in response to the Subpoena, including towing logs, receipts and invoices.

13. Since at least January 2012, Defendant has conducted private property towing at parking lots located at the following locations: (a) Sharon Gardens Condominiums, Woodbridge, New Jersey 07095 ("Sharon Gardens"); (b) Peach Street Condominiums, Peach Street, Avenel, New Jersey 07001 ("Peach Street"); and (c) Hiram's Community, 1120 US Highway 1, Avenel, New Jersey 07001 ("Hiram's") (collectively, "Defendant's Lots").

14. Defendant conducted private property towing from Peach Street and Hiram's without having written contracts with the property owners.

15. In May and July 2012, the Division reviewed the signage posted at Defendant's Lots.

16. The signs posted at Defendant's Lots during 2012 contained the following fee schedule: (a) towing fee: \$150; (b) storage fee: \$35 per day; (c) decoupling fee: \$35; and (d) dolly fee: \$55.

17. None of the signs posted at Defendant's Lots during 2012 informed consumers of their right to contact the Division of Consumer Affairs ("Division") at 1-800-242-5846.

18. Defendant's invoices concerning motor vehicles towed from Defendant's Lots during 2012 revealed that Defendant charged consumers a (a) \$195 towing fee and (b) a \$70 storage fee for motor vehicles that were towed after being in storage less than 24 hours.

19. Upon information and belief, Defendant towed at least twenty-six (26) motor vehicles from Sharon Gardens during 2012.

20. Upon information and belief, Defendant towed at least two (2) motor vehicles from Peach Street during 2012.

21. Upon information and belief, Defendant towed at least one (1) motor vehicle from Hiram during 2012.

B. The Division's 2014 Investigation

22. On January 14, 2014, the Division conducted a review of the fees charged by private property towers in Woodbridge, New Jersey. The review included a comparison of the fees charged on Defendant's Lots and the fees charged on five (5) other private property lots located in Woodbridge, New Jersey not served by Defendant.

23. The signs posted at Defendant's Lots on January 14, 2014 contained the following fee schedule: (a) towing fee- \$195; (b) storage fee- \$40 per day; and (c) decoupling fee- \$85.

24. The signs posted on January 14, 2014 at five (5) other private property lots located in Woodbridge, New Jersey not served by Defendant reflected an average towing fee of \$111.

25. On January 14, 2014, Defendant's advertised towing fee was 76% higher than the average towing fee advertised by other towers operating in Woodbridge, New Jersey.

26. To date, the Division has received two (2) consumer complaints as to Defendant concerning tows that occurred from April 2012 to August 2013.

COUNT I

VIOLATION OF THE PTPA AND THE PTPA REGULATIONS BY DEFENDANT (NO CONTRACT)

27. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 26 above as if more fully set forth herein.

28. The PTPA provides as follows:

a. No person shall tow any motor vehicle parked for an unauthorized purpose or during a time at which such parking is not permitted from any privately owned parking lot, from other private property or from any common driveway without the consent of the motor vehicle owner or operator, unless:

...

(1) the person shall have entered into a contract for private property towing with the owner of the property.

[N.J.S.A. 56:13-13.]

29. The PTPA Regulations similarly provide that:

a. A private property towing company shall not remove a motor vehicle from private property without the consent of the owner or operator of the motor vehicle, unless:

(1) The person shall have entered into a contract for private property towing with the owner of the property.

[N.J.A.C. 13:45A-31.6(a)(1).]

30. At least during 2012, Defendant violated the PTPA and the PTPA Regulations by towing motor vehicles from Peach Street and Hiram without having written contracts with the property owners.

31. The PTPA, N.J.S.A. 56:13-21, provides that “[i]t is an unlawful practice and a violation of P.L.1960, c.39 (C.56:8-1 et seq.) to violate any provision of this act [C.56:13-7 et al.]”

32. The PTPA Regulations, N.J.A.C. 13:45A-31.10, similarly provide that “a violation of any of the rules in this subchapter shall be considered an unlawful practice under of P.L.1960, c.39 (C.56:8-1 et seq.)

33. Each violation of the PTPA and/or the PTPA Regulations constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

COUNT II

VIOLATION OF THE PTPA AND THE PTPA REGULATIONS BY DEFENDANT (EXCESSIVE TOWING FEES)

34. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 33 above as if more fully set forth herein.

35. The PTPA, N.J.S.A. 56:13-14, requires that private property owners charge “reasonable” towing fees, which it defines, in pertinent part, as follows:

b. All fees charged for private property or other non-consensual towing services and related towing services shall be reasonable and not excessive. Such fees shall be presumptively unreasonable and excessive if they exceed by more than 25 percent, or a different percentage established by the director by regulation, the usual and customary fee charged by the towing company or storage facility for such services when provided with the consent of the owner or operator of the vehicle, or if they

exceed by more than 50 percent, or a different percentage established by the director by regulation, the usual and customary fee charged for such nonconsensual towing or related storage service by other towing companies or storage facilities operating in the municipality ...

36. The PTPA Regulations, N.J.A.C. 13:45A-31.5(a)(2) set forth the same requirement for private property towers.

37. The PTPA, N.J.S.A. 56:13-16f(2), provides that “it shall be an unlawful practice for any private property towing company or any other towing company that provides non-consensual towing services ... to charge an unreasonable or excessive fee.”

38. The signs posted at Defendant’s Lots on January 14, 2014 contained the following fee schedule: (a) towing fee: \$195; (b) storage fee: \$40 per day; and (c) decoupling fee: \$85.

39. The signs posted on January 14, 2014 at five (5) other private property lots located in Woodbridge, New Jersey not served by Defendant reflected an average towing fee of \$111.

40. On January 14, 2014, Defendant’s advertised towing fee of \$195 was 76% higher than the average towing fee advertised by other towers operating in Woodbridge, New Jersey.

41. Each instance of Defendant charging an excessive towing fee constitutes a violation of the PTPA and the PTPA.

42. Each violation of the PTPA and/or the PTPA Regulations constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

COUNT III

**VIOLATION OF THE PTPA REGULATIONS
BY DEFENDANT
(EXCESSIVE STORAGE FEES)**

43. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 42 above as if more fully set forth at length herein.

44. The PTPA Regulations, N.J.A.C. 13:45A-31.4(d) set forth the following requirements for the calculation of storage fees:

A towing company that engages in private property towing or other non-consensual towing shall calculate storage fees based upon full 24-hour periods a motor vehicle is in the storage facility. For example, if a motor vehicle is towed to a storage facility at 7:00 P.M. on one day and the owner of the motor vehicle picks up the motor vehicle before 7:00 P.M. the next day, the towing company shall charge the owner of the motor vehicle only for one day of storage. If a motor vehicle is stored for more than 24 hours, but less than 48 hours, the towing company can charge for two days of storage.

45. At least in 2012, Defendant repeatedly charged consumers for two days of storage when the consumers' motor vehicle was in storage less than 24 hours.

46. Each violation of the PTPA Regulations constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

COUNT IV

**VIOLATION OF THE PTPA AND
THE PTPA REGULATIONS BY DEFENDANT
(SIGNAGE VIOLATIONS)**

47. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 46 above as if more fully set forth herein.

48. The PTPA sets forth specific requirements for signage concerning unauthorized parking and any resultant towing, in pertinent part, as follows:

a. No person shall tow any motor vehicle parked for an unauthorized purpose or during a time at which such parking is not permitted from any privately owned parking lot, from other private property or from any common driveway without the consent of the motor vehicle owner or operator, unless:

...

(2) there is posted in a conspicuous place at all vehicular entrances to the property which can easily be seen by the public, a sign no smaller than 36 inches high and 36 inches wide stating:

...

(f) such contact information for the Division of Consumer Affairs as may be required by regulation; . . .

[N.J.S.A. 56:13-13.]

49. The PTPA Regulations, N.J.A.C. 13:45A-31.6(a)(2) set forth similar requirements, adding the telephone number of "1-800-242-5846" for the Division.

50. At least since May 2012, Defendant has violated the PTPA and PTPA Regulations by repeatedly towing motor vehicles without the vehicle's owner or operator's consent from private property where the signs posted on the property failed to include the telephone number of "1-800-242-5846" for the Division, as required by N.J.A.C. 13:45A-31.6(a)(2).

51. Each instance where Defendants have towed a motor vehicle from a parking lot or other private property at which the signage required by the PTPA and/or the PTPA Regulations has not been posted constitutes a separate violation of the PTPA, N.J.S.A. 56:13-13, and/or the PTPA Regulations, N.J.A.C. 13:45A-31.6(a)(2).

52. Each violation of the PTPA and/or the PTPA Regulations constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

COUNT V

VIOLATION OF THE CFA BY DEFENDANT (MISREPRESENTATIONS AND UNCONSCIONABLE PRACTICES)

53. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 52 above as if more fully set forth at length herein.

54. The CFA, N.J.S.A. 56:8-2 prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing 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 merchandise . . .

55. In the operation of its towing business, Defendant has engaged in the use of misrepresentations and unconscionable commercial practices.

56. The signs posted at Defendant's Lots during 2012 indicated that Defendant charged a \$150 towing fee.

57. Defendant's invoices concerning motor vehicles towed from Defendant's Lots during 2012 revealed that Defendant charged consumers a \$195 towing fee.

58. Each instance of Defendant misrepresenting the amount of its towing fees constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

59. Defendant's invoices concerning motor vehicles towed from Defendant's Lots during 2012 revealed that Defendant charged consumers for two (2) days of storage, or \$70, when the consumers' motor vehicles were in storage less than 24 hours.

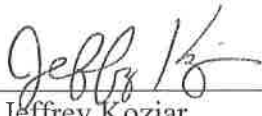
60. Each instance of Defendant charging consumers for two (2) days of storage, or \$70, when the consumers' motor vehicles were in storage less than 24 hours represents an unconscionable commercial practice and constitutes a separate violation of the CFA.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, the Plaintiffs respectfully request that the Court enter judgment against Defendant:

- (a) Finding that the acts of Defendant constitute multiple instances of unlawful practices in violation of the PTPA, N.J.S.A. 56:13-7 et seq., the PTPA Regulations, N.J.A.C. 13:45A-31.1 et seq., and the CFA, N.J.S.A. 56:8-1 et seq.;
- (b) Permanently enjoining Defendant and its owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, independent contractors, corporations, subsidiaries, affiliates, successors, assigns and all other persons or entities directly under their control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the PTPA, N.J.S.A. 56:13-7 et seq., the PTPA Regulations, N.J.A.C. 13:45A-31.1 et seq., and the CFA, N.J.S.A. 56:8-1 et seq., including, but not limited to, the acts and practices alleged in the Complaint;
- (c) Directing the restoration by Defendant to any affected person, whether or not named in this Complaint, any money acquired by means of any practice alleged herein to be unlawful and found to be unlawful, as authorized by the PTPA, N.J.S.A. 56:13-21(b), and the CFA, N.J.S.A. 56:8-8;
- (d) Assessing the maximum statutory civil penalties against Defendant for each and every violation of the PTPA, the PTPA Regulations and the CFA, in accordance with N.J.S.A. 56:13-21, N.J.A.C. 13:45A-31.10 and N.J.S.A. 56:8-13;
- (e) Directing the assessment of costs and fees, including attorneys' fees, against Defendant for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and
- (f) Granting such other relief as the interests of justice may require.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 


Jeffrey Koziar
Deputy Attorney General
Consumer Fraud Prosecution Section

Dated: February 26, 2014
Newark, New Jersey

RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the PTPA, N.J.S.A. 56:13-17 et seq., and the PTPA Regulations, N.J.A.C. 13:45A-31.1 et. seq., and the CFA, N.J.S.A. 56:8-1 et seq., is not the subject of any other action pending in any other court of this State. I am aware that private contract and other actions have been brought against the Defendant, but have no direct information that any such actions involve consumer fraud allegations. I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action at this time.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By:  _____
Jeffrey Koziar
Deputy Attorney General
Consumer Fraud Prosecution Section

Dated: February 26, 2014
Newark, New Jersey

RULE 1:38-7(c) CERTIFICATION OF COMPLIANCE

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Jeffrey Koziar
Jeffrey Koziar
Deputy Attorney General
Consumer Fraud Prosecution Section

Dated: February 26, 2014
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Jeffrey Koziar, Deputy Attorney General, is hereby designated as trial counsel on behalf of Plaintiffs in this action.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Jeffrey Koziar
Jeffrey Koziar
Deputy Attorney General
Consumer Fraud Prosecution Section

Dated: February 26, 2014
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