

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-04-293

STATE OF MAINE, by and through)
ROBERT W. SPEAR, Commissioner of)
Agriculture and G. STEVEN ROWE,)
Maine Attorney General,)

Plaintiffs)

v.)

BRYAN L. HALE, d/b/a AVERY)
ACRES FIREWOOD,)

Defendant)

CONSENT DECREE

(Maine Unfair Trade

Practices Act 5 M.R.S.A. §207)

Plaintiff, State of Maine, has filed its Complaint in the above-captioned matter on December 12, 2004. The State of Maine and Defendant Bryan L. Hale have consented to entry of this Consent Decree without trial or adjudication of issue of fact or law herein. This Decree does not constitute evidence against the Defendant or an admission by the Defendant of any of the allegations in the Plaintiff's Complaint.

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any fact or law herein, and upon the consent of the parties hereto, it is hereby ordered and decreed as follows:

1. This Court has jurisdiction over the subject matter of this action and over the parties consenting to this Decree. The Complaint states claims which may be granted against Defendant pursuant to the Maine Unfair Trade Practices Act (UTPA), 5 M.R.S.A. §205-A-214, and the Maine Weights and Measures Law, 10 M.R.S.A. Chapter 501.

2. Defendant Bryan L. Hale, his agents, employees, assigns, and any other person in active concert or participation with him in the sale of firewood who receives actual notice of this injunction is enjoined from:
- A. Failing to deliver to customers the amount of firewood contracted for, in violation of 10 M.R.S.A. §2751;
 - B. Charging the firewood customers more than the represented price per chord;
 - C. Failing to deliver to firewood customers the statutorily required delivery ticket required by 10 M.R.S.A. §2624;
 - D. Misrepresenting the quantity of firewood being sold, in violation of 10 M.R.S.A. §2651; and
 - E. Using unfair or deceptive sale practices, in violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. §207, in connection with the offer, sale, advertising, promotion and delivery of firewood to Maine consumers.
3. Defendant Hale shall pay restitution to the following consumers who were delivered less firewood than was represented to the consumer and which the consumer paid for. These restitution payments are as follows:

CONSUMER	RESTITUTION OWED
A. Christa Burch and Beth Carnicella 71 Summit Road Gray, ME 04039 Tel. 657-2269	\$128.00

B. Gerard Caron 178 Myrte Street Westbrook, ME 04092	\$32
C. Edward and Elexia Green 101 Pope Road Windham, ME 04062	\$174
D. Richard M. Lawrence 28 Belfort Street Portland, Maine 04103	\$200.00
E. Michael Mallis 395 River Road Windham, Maine 04062	\$231.00
F. Theodore Ozimek 139 Edward Street Portland, Maine 04102	\$78
G. Dan Sawyer 163 Dingley Spring Road Gorham, Maine 04038	\$56.00
H. Brian Wolcott 147 Fairwind Lane Cumberland Foreside, ME 04110	\$70.00

The Defendant shall pay this restitution by certified bank check or money order, payable to the consumers listed above. These payments shall be made no later than 30 days from the date of this Consent Decree.

4. For a period of 90 days after the date of this Consent Decree, the Defendant shall reimburse any consumer for failing to deliver the amount of firewood contracted for if the consumer presents to the Attorney General an affidavit that provides a factual basis for the consumers claim of not receiving the contracted for amount of firewood. This restitution shall be made by the Defendant within 30 days from the date the Attorney General notifies the Defendant that the consumer's affidavit provides a reasonable basis for restitution.
5. Pursuant to 5 M.R.S.A. §209, in addition to the above restitution, the Defendant is ordered to pay the Department of the Attorney General a civil penalty of \$3,500. This civil penalty shall be paid by certified bank check or money order, payable to the Department of the Attorney General in monthly installments of \$400. Payments shall begin no later than 30 days from the date of this Consent Decree. The Defendant may accelerate payment of this civil penalty if he so wishes.
6. Jurisdiction is retained by this Court for the purpose of enabling any party of this Consent Decree to apply to this Court at any time for such further orders as may be necessary for the modification of any of the provisions of this Decree.
7. Any violation of the Defendant of the mandatory injunctions listed above (¶2) and orders to pay money (¶s 3-5) shall be subject to the civil penalty authorized in 5 M.R.S.A. §209.

8. The undersigned, with the knowledge of the terms of the above Consent Decree, agree to these terms and to the entry of this Consent Decree.
9. Each and every violation of this Consent Decree shall be treated as a separate contempt hereof.

Dated: _____

Justice, Superior Court

Dated: _____

For the Defendant:

Dated: _____

For the Plaintiff:

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BRYAN L. HALE, d/b/a)
AVERY ACRES FIREWOOD,)

Defendant)

COMPLAINT

(Injunctive and Other Relief Requested)

INTRODUCTION

1. Plaintiff, State of Maine, by its Commissioner of Agriculture and its Attorney General, brings this action in the name of the State of Maine pursuant to the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 205-A to 214, and the Maine Weights and Measures Law, 10 M.R.S.A. Chapter 501.

PARTIES

2. Plaintiff, State of Maine (the "State") is a sovereign state.
3. Defendant, Bryan L. Hale, whose business address is Avery Acres Firewood, 12 Tammy Lane, Windham, ME 04062, is a Maine resident and a seller of firewood used primarily to heat the homes of Maine consumers.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 4 M.R.S.A. § 105, 5 M.R.S.A. § 209, 10 M.R.S.A. § 2752.

STATUTORY BACKGROUND

5. Pursuant to 5 M.R.S.A. § 207, “unfair or deceptive acts in the conduct of any trade or commerce are . . . unlawful.”

6. Pursuant to 5 M.R.S.A. § 209:

Whenever the Attorney General has reason to believe that any person is using or is about to use any method, act or practice declared by § 207 to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the State against such person to restrain by temporary or permanent injunction the use of such method, act or practice, and the Court may make such orders or judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use or employment of such unlawful method, act or practice, any monies or property, real or personal, which may have been acquired by means of such method, act or practice

7. Pursuant to 5 M.R.S.A. § 209, each violation of 5 M.R.S.A. § 207 that results from intentional and unfair or deceptive conduct is a civil violation for which a civil penalty of up to \$10,000 may be adjudged.

8. Pursuant to 10 M.R.S.A. § 2621, it is illegal to misrepresent the quantity of firewood being sold to purchasers.

9. Pursuant to 10 M.R.S.A. § 2624, it is illegal to sell bulk deliveries of firewood without also providing a delivery ticket containing the following information:

- A. the name and address of the vendor and purchaser;
- B. the date the firewood was delivered;
- C. the quantity of firewood delivered and the quantity upon which the price was based, if this differs from the delivered quantity; and
- D. a description of the kind of firewood being sold.

10. Pursuant to 10 M.R.S.A. § 2751 (5), it is illegal to sell and deliver less firewood than the quantity represented to the consumer.

FACTS

11. Bryan Hale owns and operates a business known as Avery Acres Firewood. The business address of Avery Acres Firewood is 12 Tammy Lane, Windham, ME 04062.

12. Defendant Hale sells cut and split firewood to Maine consumers based on a price per cord of wood.

13. Defendant Hale does not provide his firewood customers with a delivery ticket as required by 10 M.R.S.A. § 2624.

14. In at least 5 separate cases during the summer and fall, 2004, Defendant Hale sold and delivered significantly less firewood than was represented to the consumer, and which the consumer paid for, based on the Defendant's representation.

15. By way of example only, consumers Edward and Elexia Green of Windham, Maine, in June, 2004, purchased three cords of cut and split firewood from Defendant Hale. When the Greens' firewood purchase was measured by the Maine Department of Agriculture, it was found to be 152.9 cubic feet short. The Greens paid \$145 per cord for cut and split wood and was therefore overcharged \$174.00 for the wood they purchased from Defendant Hale.

COUNT ONE (Selling Less Firewood Than The Quantity Represented)

16. The State repeats, realleges, and incorporates herein by reference paragraphs 1 through 15 of this Complaint.

17. In at least 5 separate transactions during the summer and fall, 2004, Defendant Hale delivered to a purchaser less firewood than was represented, and as a result, the purchaser was significantly overcharged for the firewood.

18. The Defendant's conduct as described in this Count constitutes deceptive acts or practices in the conduct of trade or commerce, and is in violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

19. The Defendant's conduct as described in this Count was intentional.

COUNT TWO
(Failing To Provide A Delivery Ticket)

20. The State repeats, realleges, and incorporates herein by reference paragraphs 1 through 19 of this Complaint.

21. In at least 5 separate transactions during the summer and fall, 2004, the Defendant failed to provide to his firewood customers the delivery ticket required by 10 M.R.S.A. § 2624.

22. The Defendant's conduct as described in this Count is in violation of both 10 M.R.S.A. § 2624 and the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

23. The Defendant's conduct as described in this Count was intentional.

COUNT THREE
(Violation of Firewood Sales Statutes)

24. The State repeats, realleges, and incorporates herein by reference paragraphs 1 through 23 of this Complaint.

25. The Defendant's sales of less firewood than the quantity he represented to his customers were in violation of both 10 M.R.S.A. § 2621 and the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

26. The Defendant's conduct as described in this Count was intentional.

RELIEF REQUESTED

Accordingly, the State requests that this Court:

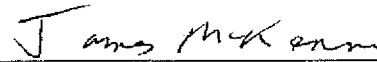
1. Declare that the Defendant has violated the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.
2. Declare that each violation by the Defendant of 5 M.R.S.A. § 207 resulted from the Defendant's intentional and unfair or deceptive conduct.
3. Declare that the Defendant's failure to deliver to consumers the amount of firewood represented was in violation of 10 M.R.S.A. § 2621 and 10 M.R.S.A. § 2751.
4. Declare that the Defendant's failure to provide the statutorily required delivery ticket to his firewood customers was in violation of 10 M.R.S.A. § 2624.
5. Pursuant to 5 M.R.S.A. § 209 and 10 M.R.S.A. § 2753, issue a permanent injunction enjoining the Defendant, his agents, servants, employees, and any other person in active concert or participation with him in the sale of firewood who receives actual notice of this injunction from:
 - A. failing to deliver to customers the amount of firewood represented;
 - B. charging the firewood customers more than the represented price per cord;
 - C. failing to deliver to firewood customers the statutorily required delivery ticket; and
 - D. violating the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207, in connection with the offer, sale, advertising, promotion and delivery of firewood to Maine consumers.

6. Pursuant to 5 M.R.S.A. § 209, and the Court's own equitable powers, award such equitable relief as the Court deems necessary to redress injury to consumers resulting from the Defendant's violations of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207, and the Maine Weights and Measures Law, 10 M.R.S.A., Chapter 501.
7. Pursuant to 5 M.R.S.A. § 209, order the Defendant to pay a civil penalty of up to \$10,000 for each intentional violation of 5 M.R.S.A. § 207.
8. Pursuant to 5 M.R.S.A. § 209 and 14 M.R.S.A. § 1522 (1) (A), order the Defendant to pay the State its cost of the investigation and suit, including its attorney's fees.
9. Grant such other and further relief as the Court deems just and proper.

Dated: 12/21/04

Respectfully submitted,

G. STEVEN ROWE
Attorney General



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