

STATE OF MAINE  
KENNEBEC, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-99-

STATE OF MAINE	)	
	)	
V.	)	COMPLAINT
	)	
GERALD NELSON, SR.	)	

### I. INTRODUCTION

1. The State brings this action against Gerald Nelson, Sr. pursuant to the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 206-216 and the Consumer Solicitations Sales Act, 32 M.R.S.A. §§ 4661-4670 seeking permanent injunctive relief, restitution, civil penalties, costs and attorneys' fees.

### II. PARTIES

2. Plaintiff, State of Maine, is a sovereign state and brings this action by and through its Attorney General pursuant to 5 M.R.S.A. §§ 191 and 209 and the powers vested in him by common law.

3. The defendant Gerald Nelson, Sr. is an individual d/b/a Nelson Logging or New England Forestry with a place of business at 145 Smithton Road, Freedom, Maine. Gerald Nelson, Sr. resides on Drake Hill in Albion, Maine.

### III. VENUE

4. Pursuant to 5 M.R.S.A. § 209, venue is proper in Kennebec County.

#### IV. JURISDICTION

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

#### V. STATUTORY BACKGROUND

6. Pursuant to 5 M.R.S.A. §207, unfair or deceptive acts or practices in the conduct of any trade or business are unlawful.

7. Pursuant to 5 M.R.S.A. §209, whenever the Attorney General has reason to believe that an unfair trade practice is being committed or is about to be committed, the Attorney General may bring an action in the name of the State of Maine against such person to restrain by temporary or permanent injunction the act or practice and the Court may make such other orders and 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 unfair trade practice any monies or properties which may have been acquired by means of the unfair trade practice.

8. Pursuant to the Consumer Solicitation Sales Act, 32 M.R.S.A. §§ 4661 et. seq. Where merchandise, including goods or services, are as a result of a salesman's direct solicitation of the consumer other than at the seller's place of business, without the consumer initiating the contact, there must be a written contract bearing the signature of the seller and consumer, contain the date of the transaction, the terms of the sale or offer, the name and the mailing address of the seller's permanent place of business, and a statement of the consumer's right to avoid the contract or sale by giving written notice of avoidance to the seller within 3 full business days following the day on which the contract or sale was made.

9. Pursuant to 32 M.R.S.A. § 4670, and violation of the Consumer Solicitation Sales Act shall constitute a violation of the Unfair Trade Practices Act.

## VI. FACTS

10. Gerald Nelson, Sr. has worked as a logger, cutting wood on woodlots owned by others, his whole life. He has been semi-retired since about 1993. Since 1993, Gerald Nelson, Sr. has worked as a logger with his son, Gerald Nelson, Jr.

11. The defendant Gerald Nelson, Sr. has engaged in a pattern and practice of unfair and deceptive conduct including but not limited to the following:

### **A. Consumer # 1**

12. In 1997, Gerald Nelson, Sr. sent a letter to a New Jersey resident who owns a woodlot in Hampden, Maine. In the letter, Gerald Nelson, Sr. stated "We are writing about your land in Hampden, Maine. We have a small logging business, and would like to do some selective cutting on your land. We do very good work, and will offer fair prices for the wood. Choosing Selective Cutting will improve the quality of you (sic) land for the future. If you are interested in more details of Selective Cutting give us a call or write."(emphasis original). Gerald Nelson, Sr. followed this letter to the New Jersey resident with a phone call.

13. An inspection of the lot shows that the defendant damaged many of the trees left on the site due to poor logging practices. For example trees were felled without the use of directional falling techniques. Many of the severely damaged trees were dead at the time of inspection due to wind throw, which was a direct result of machinery wheel ruts which cut or damaged the root systems of trees which were adjacent to poorly placed skid trails. Litter, which came from the timber harvest was found on the property. The harvest was a high grade type harvest, taking the best and leaving the rest, which resulted in a degradation of the residual stand of timber.

14. Gerald Nelson, Sr. paid the landowner \$3,000 for the wood harvested from this lot. The Maine Forest Service estimates the total value of the wood taken from the lot to be about \$17,250.00.

**B. Consumer #2**

15. In February of 1997, Gerald Nelson, Jr. sent a letter to a resident of Connecticut who owns a woodlot in Ellsworth, Maine. In the letter Gerald Nelson, Jr. states: "I have a small logging business and would like to do some Selective Cutting on your land. I do very good work, and offer fair prices for the wood. I see there is a lot of Selective cutting that could be done to turn your lot into a healthy forest."

16. As a result of this letter, on or about August, 1997, the landowner, who had moved to South Carolina, entered into a contract for the harvesting of his woodlot with Gerald Nelson, Sr. The harvest degraded and devalued the existing residual stand of timber as well as limiting future silvicultural options using natural regeneration by removing the high value and high growth white pine and leaving the low quality hardwoods. 330 board feet of white pine logs which were marketable at the time of harvest, were left on the lot not brought to market. These logs are now degraded to pulp quality. The contract prices for the types of wood harvested, were roughly one-third of the average market price. The defendant paid the consumer \$1500 for the wood harvested.

**C. Consumer #3**

17. On or about February of 1997, Gerald Nelson, Jr. sent a letter to a another resident of Connecticut who owns a woodlot in Ellsworth. The letter was identical to the letter quoted in paragraph 15. On or about September 1997, this woodlot owner entered into a contract with Gerald Nelson, Sr. In the harvest of this lot, the best and most valuable trees were cut while low

grade, rough and rotten trees were left standing or broken down and left. The overall quality of the trees in the stand were severely degraded. The landowner terminated the harvest prior to its completion.

#### **D. Consumer #4**

19. On or about February of 1998, a resident of New Hampshire who owns woodlots in Damariscotta, Maine received the same letter from Nelson Logging. On or about March 1, 1998, Gerry Nelson called this landowner. The landowner agreed to meet with Gerald Nelson, Sr. on March 5, 1998. On or about March 3, 1998 the landowner cancelled the March 5 meeting. On or about March 11, 1998, the landowner received scale slips and a check for \$1,500. Although the landowner never gave permission or entered into a contract, Gerald Nelson, Sr. harvested his Damariscotta lot on March 2-6, 1998, taking about \$8,500 worth of wood.

#### **E. Misrepresentations**

20. Defendant Gerald Nelson, Sr. misrepresents material facts to induce consumers to enter contracts with him that allow him to harvest wood from their woodlots.

21. Defendant Gerald Nelson, Sr. intentionally creates the impression that the harvest will be selective and will improve the overall health of the woodlot when in fact he harvests only the most valuable wood and leaves the undesirable wood on the lot.

22. Defendant Gerald Nelson, Sr. misrepresents that he does a good job in harvesting wood lots when in fact his harvesting operations include violations of acceptable forestry practices.

23. Defendant Gerald Nelson, Sr. misrepresents the price he pays for wood he harvests as fair when in fact is below fair market value.

24. Consumers rely on Defendant Gerald Nelson, Sr.'s misrepresentations when making a decision to contract with him to harvest their woodlots.

**F. Three Day Right to Cancel/ Written Contract Required**

25. Gerald Nelson, Sr. solicits consumers by sending letters or calling them. He directly solicits them other than at his place of business without the consumer initiating the contact.

26. On some occasions when Gerald Nelson, Sr. solicited business from woodlot owners, he entered into written contracts with them. At other times there was no written contract.

27. The written contracts that Gerald Nelson, Sr. entered into with these woodlot owners did not contain a statement of the consumer's right to avoid the contract by giving written notice to the seller by ordinary mail, postage prepaid, within 3 full business days following the day on which the contract or sale was made.

**VII COUNT I**

(Unfair Trade Practices Act)

**MISREPRESENTATIONS**

28. Plaintiff repeats, realleges and incorporates herein by reference the preceding paragraphs of this complaint.

29. Defendant Gerald Nelson, Sr. 's practice of misrepresenting facts material to a consumer's decision to enter into a contract for the harvest of his or her woodlot constitutes a pattern or practice of unfair and deceptive conduct in violation of the Unfair Trade Practices Act, 5 M.R.S.A. § 207.

30. Gerald Nelson Sr.'s practices as described in this Count are intentional.

**VIII COUNT II**

(Consumer Solicitation Sales Act/ Unfair Trade Practices Act)

## VIOLATION OF CONSUMER SOLICITATION SALES

31. The plaintiff repeats and realleges and incorporates herein by reference the preceding paragraphs of the complaint.

32. Defendant Gerald Nelson, Sr.'s practice of soliciting consumer sales other than at his place of business and entering into written contracts that do not include a notice of the consumer's right to avoid the contract within three business days violates the Consumer Solicitations Sales Act, 32 M.R.S.A. §§ 4661 et. seq.

33. Pursuant to 32 M.R.S.A. § 4670, Defendant's conduct also violates the Unfair Trade Practices Act, 5 M.R.S. A § 207.

### RELIEF REQUESTED

Plaintiff requests the following relief:

1. Declare the conduct of Defendant Gerald Nelson, Sr. as described in this Complaint is in violation of the Maine Unfair Trade Practices Act and the Consumer Solicitation Sales Act.

2. Permanently enjoin Gerald Nelson, Sr. his agents, servants, employees and those persons in active concert or participation with him who receive actual notice of the injunction from:

A. Misrepresenting to consumers that he will pay fair prices for their wood;

B. Misrepresenting to consumers that he will harvest woodlots to promote a healthy forest;

C. Entering into contracts with consumers that he solicits that do not contain the three day cooling off period required by 32 M.R.S.A. §§ 4661 et seq.;

D. Misrepresenting to consumers the nature and extent of the cutting that he will on their woodlots;

E. Making any other misrepresentations in the course of soliciting and performing contracts to harvest woodlots.

3. Pursuant to 5 M.R.S.A. § 209 and 32 M.R.S.A. § 4670 , permanently enjoin Gerald Nelson, Sr., his agents, servants, employees and those persons in active concert or participation with him who receive actual notice of the injunction from entering into contracts with consumers that he solicits that do not contain the three day cooling off period required by 32 M.R.S.A. §§ 4661 et seq.

4. Order Defendant Gerald Nelson, Sr. to submit an accounting of all wood he has harvested from January 1, 1997 to the present including the name and address of the landowner, the amount of wood taken, the amount Nelson received for the wood and the amount he paid the landowner.

5. Order Defendant Gerald Nelson, Sr. to pay restitution to all landowners who have been injured by his unlawful practices.

6. Order Defendant Gerald Nelson, Sr. to pay to the Department of the Attorney General, pursuant to 5 M.R.S.A. § 209, civil penalties in an amount not to exceed \$10,000 for each intentional violation of 5 M.R.S.A. § 207.

7. Order Defendant Gerald Nelson, Sr. to pay the Department of the Attorney General the costs of suit and investigation, including attorneys' fees.




8. Order such other and further relief as may be necessary to remedy the effects of the Defendant Gerald Nelson, Sr.'s unfair and deceptive practices.

Dated: June 14, 1999

Respectfully submitted,

ANDREW KETTERER  
ATTORNEY GENERAL



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Attorneys for the State of Maine

U.S. BANKRUPTCY COURT  
DISTRICT OF MAINE  
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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE

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In re: \*  
GERALD NELSON \* Chapter 13  
\* Case No. 99-11185  
\*  
Debtor \*  
\*\*\*\*\*

MEMORANDUM OF DECISION

Before me is the State of Maine's motion seeking clarification of the automatic stay's scope or, alternatively, relief from the stay. The material facts are not in dispute. The parties and the Chapter 13 trustee have argued the motion's merits and have briefed the issues. For the reasons set forth below, I conclude that the State's pending state court action against the debtor is excepted from U.S. Bankruptcy Code § 362(a)'s automatic stay by § 362(b)(4).<sup>1</sup>

FACTS

Gerald Nelson filed a voluntary Chapter 13 petition on July 19, 1999. Pending in Superior Court for Kennebec County at that time was the State of Maine's complaint alleging violations of Maine's Unfair Trade Practices Act, see Me. Rev. Stat. Ann. tit. 5, §§ 206-214 (West 1989 & Supp. 1998), and the Consumer

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<sup>1</sup> This memorandum sets forth my conclusion of law pursuant to Federal Rule of Bankruptcy Procedure 7052 (made applicable to this contested matter by Federal Rule of Bankruptcy Procedure 7052) and Federal Rule Civil Procedure 52. Unless otherwise noted, all references to statutory sections are to the Bankruptcy Reform Act of 1978 ("Bankruptcy Code" or "Code"), as amended, 11 U.S.C. § 101 et seq.

Solicitations Sales Act. See Me. Rev. Stat. Ann. tit 32, §§ 4661-4671 (West 1999). The State sought injunctive relief, civil penalties, restitution, and costs.<sup>2</sup> Among other things, the state court complaint alleged that Nelson violated state law in his dealings with four, named landowners. In each case Nelson allegedly misrepresented the scope of work he was to perform, failed to provide a written contract or provided a contract in impermissible form, harvested wood of a value exceeding the agreed price, and did not pay the landowner the contract price.

#### DISCUSSION

Section 362(a)'s automatic stay, activated at the petition's filing, enjoins a debtor's prebankruptcy creditors from pursuing a comprehensive array of actions aimed at establishing or collecting a debtor's prepetition liabilities.<sup>3</sup> The stay "is

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<sup>2</sup> The State asked that Nelson be permanently enjoined from:

- a. telephoning, writing letters to, or in any way soliciting persons who own land in Maine with respect to harvesting or selectively cutting their wood, timber or trees;
- b. making misrepresentations in violation of the Unfair Trade Practices Act; and
- c. violating the Consumer Solicitations Sales Act....

(State of Maine Mot. at 2; see also Ex. A, Superior Court Complaint at 8).

<sup>3</sup> As applicable to this dispute, section 362(a) provides:

Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title ... operates as a stay, applicable to all entities, of -

- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against

intended to give the debtor breathing room," Soares v. Brockton Credit Union (In re Soares), 107 F.3d 969, 975 (1<sup>st</sup> Cir. 1997), "effect[ing] an immediate freeze of the status quo at the outset of the [bankruptcy] proceeding, by precluding and nullifying most postpetition actions and proceedings against the debtor in nonbankruptcy fora, judicial or nonjudicial, as well as most extrajudicial acts against the debtor, or affecting property in which the debtor, or the debtors's estate, has a legal, equitable or possessory interest." Interstate Commerce Comm'n v. Holmes Transp., Inc., 931 F.2d 984, 987 (1<sup>st</sup> Cir. 1991).

A longstanding exception to the automatic stay's substantial reach provides that governmental units are not enjoined from taking actions to enforce their "police powers."<sup>4</sup> Set forth in

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the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

....

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title[.]

§ 362(a)(1), (2)(3), (6).

<sup>4</sup> "[T]he bankruptcy court is not a haven for wrongdoers. The policy of the Code is to permit regulatory, police and criminal actions to proceed in spite of section 362(a)(1), and to permit enforcement of resulting judgments or orders, other than money judgments, in spite of section 362(a)(2)." 2 Collier on Bankruptcy, ¶ 363.05[5][a] (15<sup>th</sup> 3d. Rev. 1999). The First Circuit has stated that the police and regulatory power exception coupled with 28 U.S.C. § 959(b)'s requirement that court

§ 362(b)(4), the "police and regulatory power exception" currently provides<sup>5</sup> that the injunctive provisions of § 362(a) do not operate to stay:

the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's . . . police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's . . . police or regulatory power.

11 U.S.C. § 362(b)(4).<sup>6</sup>

Nelson concedes that the State of Maine is a "governmental unit" and that, in pursuing the civil action now pending in the

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appointed trustees, receivers, or managers undertake their charge in accordance with State laws "indicate[s] strongly that the automatic stay should not be used as a shield against the application and enforcement of valid state and local laws." Cournoyer v. Town of Lincoln, 790 F.2d 971, 977 (1<sup>st</sup> Cir. 1986). See also Penn Terra Ltd. v. Department of Env'tl. Resources, 733 F.2d 267, 271-74 (3d Cir. 1984) (discussion of the legislative history of the police and regulatory power exception to the stay (prior to the 1999 revisions)).

<sup>5</sup> The 1999 Chemical Weapons Convention Implementation Act amended § 362(b)(4) in three ways: former subsections (b)(4) and (b)(5) were combined; language was inserted into the introductory clause to provide expressly that the exception applies to actions otherwise falling under § 362(a)(3) and (6); and organizations operating under the Chemical Weapons Convention were expressly identified as entitled to invoke § 362(b)(4). The reworking created "apparently unintentional ambiguities, which are best resolved by reference to the pre-amendment version." 2 Colliers on Bankruptcy, *supra*, ¶ 362.05[5][b].

<sup>6</sup> The exception of § 362(b)(4) applies only to actions falling under the purview of subsections § 362(a)(1), (2), (3), or (6). See § 362(b)(4); § 363(a). See also *supra* notes 3 and 5.

state court it is enforcing its police and regulatory power.<sup>7</sup> Indeed, 362(b)(4)'s application to the State's efforts to obtain injunctive relief is straightforward. See, e.g., Penn Terra Ltd., 733 F.2d 267 (in an action against debtor for violations of environmental laws by a state agency resulting in an injunction requiring debtor to perform certain remedial acts, court concluded action was excepted from the stay, rejecting the argument that it was enforcement of a money judgment clothed as injunctive relief); see also Cournoyer, 790 F.2d 971 (town's enforcement of its zoning laws by removing used truck parts from debtor's property - stored there in violation of a consent decree, town zoning laws, and a court order on contempt charges - was excepted from the stay).

Section § 362(b)(4)'s application to the State's efforts to establish penalties or fines for Nelson's statutory infractions is also plain. See, e.g., Maritan v. Todd, 203 B.R. 740 (N.D. Okla. 1996) (Rule 11 sanctions against debtor/attorney excepted from the stay); NLRB v. Sawulski, 158 B.R. 971 (E.D. Mich. 1993) (contempt proceedings including fines excepted from stay); United States v. Armory Hotel Assocs., 93 B.R. 1 (D. Me. 1988) (United State's action to reduce to judgment penalties for violation of the record-keeping requirements of the immigration laws falls within the § 362(b)(4) exception).

But Nelson argues that the automatic stay does forestall the State's attempt to obtain an order for restitution. As he sees

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<sup>7</sup> This concession averts the necessity of delving into the "pecuniary purpose" test or the "public policy" test for determining whether the State is acting with the requisite § 362(b)(4) purpose in its action against Nelson. See Eddleman v. United States Dept. of Labor, 923 F.2d 782, 790-91 (10<sup>th</sup> Cir. 1991) (describing the alternative tests).

it, that attempt turns on transactions with each landowner and the damages for which each landowner asserts he is liable. Nelson points out that he has listed the landowners as creditors in his schedules and that he intends to challenge such claims as they may file. He apprehends that the State may amend its complaint to allege his misconduct in connections with others whom he has listed as creditors. He objects to what he sees as the State's attempt to "export" those disputes to the state court, contending they are part and parcel of his Chapter 13 case.

The State responds that although it may rely upon Nelson's transactions with landowner/creditors as evidence of a proper measure of restitution, its efforts are aimed at establishing a pattern of unlawful conduct and obtaining an appropriate order for restitution.<sup>8</sup> It will litigate statutory/regulatory issues, not contract claims.

I agree with the State that it is free to litigate its dispute with Nelson in state court, bankruptcy notwithstanding. I concur with the holding articulated by Judge Murphy in nearly identical circumstances:

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<sup>8</sup> The State does not seek relief from stay to enforce any money judgment it may obtain. In fact, it expects that such payment as it may exact will be obtained through Nelson's Chapter 13 plan. See, e.g., Cisneros v. Cost Control Mktg. and Sales Management of Virginia, Inc., 862 F.Supp. 1531, 1534 n.3 (W.D. Va. 1994); Maritan, 203 B.R. at 744. See also Eddleman, 923 F.2d at 791 (observing that the debtors' back-pay claimants would not achieve "any extra priority" as the result of the DOL's unstayed action because the collection of the back-pay claims would "proceed according to normal bankruptcy procedures").

Of course, how the State's potential restitution claim should be treated under Nelson's plan and how the State's distribution of restitution among Nelson's creditors would impact those creditors' Chapter 13 claims are issues for another day.

In the instant case, Movant is, without question, a governmental unit. The gravamen of Movant's Complaint is an action to stop consumer fraud. Movant seeks an injunction, imposition of a fine, and payment of restitution, all of which appear to be aimed at enforcing Movant's regulatory power. Movant's complaint does not seek recompense for any pecuniary damage it suffered at the hands of Debtor. Nor does Movant seek to enforce third parties' contracts with Debtor. A proceeding which seeks restitution is not deprived of the applicability of exceptions to the automatic stay merely because restitution bears a direct relationship to actual pecuniary losses. See, In re Whitaker, 16 B.R. 917 (M.D. Tenn. 1982); In re Farrell, 43 B.R. 115 (M.D. Tenn. 1984). The Complaint shows that Movant's purpose in filing the state court proceeding was to enforce governmental regulatory powers, not to collect a debt. Therefore, § 362(b)(4) is applicable to except Movant's lawsuit from the operation of the automatic stay.

State of Georgia v. Family Vending, Inc. (In re Family Vending, Inc.), 171 B.R. 907, 909 (Bankr. N.D. Ga. 1994). See also Eddleman, 923 F.2d at 790-91 (DOL's enforcement proceedings against debtor, seeking debarment and liquidation of back-pay claims "was but another method of enforcing the policies underlying the [Service Contract Act]" and was not "an assertion of private rights"); Cost Control Mktg. And Sales Management of Virginia, 862 F.Supp. at 1533 (HUD's action, seeking restitution and disgorgement, against debtor for violations of the Interstate Land Sales Full Disclosure Act was a "suit for the purpose of punishing the defendants for fraudulent practices and deterring any similar conduct in the future," falling within the police or regulatory power exception to the stay); Ahrens Aircraft, Inc. v. NLRB, 703 F.2d 23 (1<sup>st</sup> Cir. 1983) (enforcement of NLRB's back pay order excepted from the stay); SEC v. Towers Fin. Corp., 205 B.R. 27 (S.D.N.Y. 1997) (SEC action against debtor seeking disgorgement



of investor funds, as well as injunctive relief, was excepted from the stay as an exercise of police and regulatory powers, rejecting debtor's argument that SEC was seeking a pecuniary benefit); Nqan Gung Restaurant, Inc. v. State of New York (In re Nqan Gung Restaurant, Inc.), 183 B.R. 689 (Bankr. S.D.N.Y. 1995) (state's action for restitution of unpaid employee wages and tips against debtor/employer was excepted from the stay, rejecting the debtor's contention that the restitution was akin to private collection efforts, concluding that the relief was a method of enforcing the policy underlying the labor laws).<sup>9</sup>

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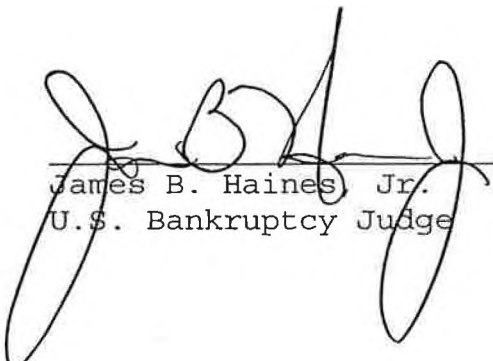
<sup>9</sup> Nelson attempts to distinguish Family Vending, Inc., and cases like it, because it was a no-asset Chapter 7 case. The effort is unconvincing. Section 362(b)(4) applies unqualifiedly to Chapter 13. See § 103(a). The impact of the police and regulatory exception on the assets of the estate and, thus, the status of a case as a liquidation versus a reorganization does not play a role in my determination of whether the exception applies. See, e.g., Eddleman, 923 F.2d at 790 (rejecting District court's conclusion that the "police and regulatory power" exception did not apply to actions interfering with the bankruptcy court's control over the Chapter 11 assets, assuming that Congress chose not to so qualify the exception "with the full recognition that the exception would allow governmental actions to encroach on the court's control of debtors' affairs"); Penn Terra Ltd., 733 F.2d at 278 ("In enacting the exceptions to section 362, Congress recognized that in some circumstances, bankruptcy policy must yield to higher priorities."); Maritan, 203 B.R. at 744 (applying § 362(b)(4) in a Chapter 13 case, concluding that there is no limitation on the police and regulatory power exception for instances in which the governmental action interferes with the administration of the debtor's assets); Sawulski, 158 B.R. 971 (applying exception in a Chapter 13 case with respect to contempt of court proceedings involving confinement and fines); In re Nqan Gung Restaurant, Inc., 183 B.R. 689 (straightforwardly applying the exception in a chapter 11 reorganization); see also Board of Governors of the Federal Reserve System v. MCorp, 502 U.S. 32, 37-42 (1991) (police and regulatory powers exception embraced two administrative proceedings by the Federal Reserve System against

CONCLUSION

For the reasons set forth above, I conclude that the State of Maine's pending civil lawsuit against the debtor is within § 362(b)(4)'s exception to the automatic stay and, therefore, may proceed without further order of this court.

A separate order shall issue forthwith.

November 12, 1999  
Date

  
James B. Haines, Jr.  
U.S. Bankruptcy Judge

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debtor for violations of the Federal Reserve Act and "source of strength" regulations, even though a determination unfavorable to the debtor could impact the bankruptcy estate; suggesting in the latter event that the bankruptcy court exercise its concurrent jurisdiction); cf. O'Hara Corp. v. F/V North Star, 212 B.R. 1, 3- (D. Me. 1997) ("Courts have begun to recognize that disparate treatment is contrary to the language and purpose of the stay. ... 'The plain language of the automatic stay provision of the Bankruptcy Code applies equally to liquidations and reorganizations.'" (quoting United States v. LeBouf Bros. Towing Co., 45 B.R. 887, 889-90 (E.D. La. 1985))).

cc: Debtor  
Peter Fessenden, Esq.  
Linda Conti, Esq.  
U.S. Trustee  
Donald Gasink, Esq.

STATE OF MAINE  
KENNEBEC SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-99-131

STATE OF MAINE,

Plaintiff

v.

GERALD NELSON, JR.,

Defendant

DECISION AND ORDER

This matter is before the court on the State's complaint alleging violations of the Unfair Trade Practices Act, 5 M.R.S.A. § 207 and the Consumer Solicitation Sales Act, 32 M.R.S.A. §§ 4661 et. seq. The plaintiff seeks injunctive relief<sup>1</sup>, civil penalties for intentional violations of the Unfair Trade Practices Act, restitution for consumers as well as its costs including attorney's fees.

The defendant, Gerald Nelson, Jr. was notified of the trial date in this case and failed to appear.

**FINDINGS OF FACT**

In May of 1996, Gerald Mulvey, a Rhode Island resident received a letter in the mail from Gerald Nelson. Nelson wrote Mulvey about his woodlot in Otisfield, Maine. Nelson told Mulvey: "I have a small logging business and would like to do some Selective Cutting on your land. I do very good work, and offer fair prices for the wood. I see there is a lot of Selective Cutting that could be done to turn your lot into a healthy forest." As a result of the letter, Mr. Mulvey and his wife called Nelson and arranged to

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<sup>1</sup> Nelson agreed to the entry of a preliminary injunction in June 2000.

meet near the property to discuss the matter. In June of 1996 they met in Maine. At that meeting Nelson told them that he would pay them \$1,500 per week from the harvest for ten weeks. The Mulveys made no decision at the meeting and returned to Rhode Island. Later that month, Nelson called and asked them if they had made a decision about the harvest. At that time the Mulveys agreed to permit Nelson to selectively harvest the wood on their Otisfield property. This agreement was verbal. There was no written contract.

The harvest began on the Mulvey property. On June 27, 1996, Mr. Mulvey called Nelson to arrange a meeting with him in Otisfield. Nelson agreed to meet with him on June 29, 1996. When Mr. Mulvey arrived, Nelson's equipment was on the lot, but Nelson did not arrive.

On July 1, 1996, Mr. Mulvey called Nelson's residence and spoke with Mrs. Nelson. Nelson returned his call that evening and told him that there was a check in the mail. On July 5, 1996, Mr. Mulvey had not yet received a check so he called Nelson and left a message on his answering machine. On July 6, 1996, Mr. Mulvey called Nelson and told him to stop cutting until he received a check. He arranged to meet with Nelson at the Otisfield property on July 8. When he arrived at the Otisfield lot in the early morning of July 8, 1996, Nelson's equipment was gone. Nelson never arrived for the meeting. Mr. Mulvey testified that he had slips establishing that Nelson harvested \$19,498 worth of wood from his land. While Norris Willette, a wood broker, paid Gerald Nelson, Jr. \$8,284.88 for wood harvested from a lot in Otisfield owned by "Gerard" from June 24 through 28, 1996. Mr. Mulvey has never received any payment for the wood Nelson harvested.

Laurian Sherman resides in Rockport, Maine and owns a woodlot in West Rockport. Gerald Nelson, Jr. contacted her and requested permission to harvest wood on her property. In September or October of 1996, Mr. and Mrs. Sherman met with Nelson at the property. She walked the lot with Nelson and told him that the land is adjacent to land owned by the local water company near Mirror Lake which is the drinking water supply. There are a number of streams on the property and Nelson told her he would not start cutting until the ground was frozen. Mrs. Sherman pointed out large hemlock trees that she did not want cut. Following the meeting, she expected Nelson to follow up with a specific proposal. In the meantime she hired a forester to create a management plan for the property.

In November of 1996 she learned that Nelson was harvesting her wood when she received a call from the water company and the Department of Environmental Protection informing her that the logging operation on her property was polluting Mirror Lake. She went to the property and saw that the large hemlocks, which she had asked Nelson not to cut, were gone. As a result of Mr. Nelson's conduct, Mrs. Sherman has suffered a loss in the ability to enjoy her land, and the land has decreased in marketability. The Shermans have spent \$4,500 to remedy the damage caused by Nelson's logging operation. While the total value of wood taken from the property is unknown, Norris Willette paid Gerald Nelson, Jr. \$3,458.59 for wood owned by "Lorriann" near Mirror Lake. The Sherman's received one check for \$600.

Harry Harden is a New Hampshire resident. He owns a woodlot in Damariscotta, Maine. In February of 1998, he received a letter from Gerald Nelson, Jr. in which Nelson offered to selectively harvest his woodlot to "improve the quality of [your] land for the

future." Nelson also stated that he offered fair prices for the wood. Mr. Harden responded to Nelson by writing him and asking which of his properties in Damariscotta Nelson proposed to harvest. Mr. Harden then received a phone call from Nelson in early March of 1998. They discussed the wood harvest and agreed to meet at the property in Maine on March 5, 1998 to discuss it further.

Mr. Harden then called a friend who is an attorney and who resides in Damariscotta. This friend told Mr. Harden that he had had a client who had sued Mr. Nelson. After receiving this information, Mr. Harden called Nelson to cancel the March 5, 1998 meeting. He was surprised the next week to receive a check from Nelson for \$1,535. He never gave Nelson permission to harvest any wood. Mr. Harden did not cash the check. He contacted the authorities. Robbins Lumber, Inc. paid Gerald Nelson, Jr. \$8,661.96 for wood harvested on March 3 through 5, 1998 from a woodlot in Lincoln County owned by Harden. Mr. Harden has never been compensated for the wood harvested from his property.

Janice Bartlett lives in Topsham, Maine. Her family owns a woodlot in Topsham near her home. She received a letter from Nelson offering "to do some Selective Cutting" on the lot and to pay "fair prices for the wood." The family discussed the possibility of having the lot harvested. She had several phone calls with Nelson and he and his wife met with her at her home. She walked the lot with him. He told her that he would selectively cut the lot and that he would remove damaged trees. He emphasized that her lot would look like a state park when he was done. He also told her that she would be paid \$40,000 to \$50,000 for the wood. She asked for references and checked them. Nothing aroused her suspicions. She entered into a written contract for the harvest of the

wood in December of 1998. Nelson began the harvest in early 1999. Mrs. Bartlett visited the lot often and asked why it did not look like a state park. Nelson harvested many more trees that she had understood would be the case. In the summer of 1999 she received a notice that Nelson had filed for bankruptcy. This news, along with the extensive cutting, upset Mrs. Bartlett. In September of 1999 she terminated the harvesting operation.

Also in September of 1999, Merle Ring, who is a licensed forester employed by the Maine Forest Service, toured the Bartlett lot. Mr. Ring, along with a team of forest rangers, performed a stump cruise of the lot in October 1999. He calculated the volumes of wood taken by species, product and value. Using the 1998 average stumpage prices for Sagadahoc County as published by the Maine Forest Service, he conservatively calculated that the landowner should have received \$24,768 in stumpage money for the wood taken. However, under the terms of the contract Nelson agreed to pay Mrs. Bartlett between \$40,000 and \$50,000. She received a total of \$14,000.

Richard Marsden received a letter from Gerald Nelson, Jr. in which Nelson offered to selectively harvest his woodlot in Swanville, Maine. At the time, Mr. Marsden lived in Massachusetts. Subsequently, Mr. Marsden moved to Maine. He received a second letter from Nelson in which Nelson expressed an interest in performing a "selective cut" and stated that trees damaged by the ice storm of 1998 should be removed. Marsden agreed and entered into a contract with Nelson in March of 1999. The harvest was conducted from March through August of 1999. Mr. Marsden did not receive payment for the wood that was being harvested. He stopped the harvest in August and hired Mr. William Calderwood, a licensed forester to assess the lot. Mr. Calderwood

performed a stump tally. He opined that based upon the species and size of trees cut, the objective of the harvest was to remove the largest and most valuable trees. This type of harvest is typically called "high-grading." Mr. Calderwood ascertained from his observation of the harvest that it was unlikely that the pine trees, which accounts for most of the value and volume removed from the Marsden lot, suffered serious damage in the ice storm.

Mr. Calderwood determined that the wood harvested from Mr. Marsden's lot is worth \$614 pursuant to the contract prices offered by Nelson. The wood is conservatively worth \$2,898 according to the most recent stumpage prices maintained by the Maine Forest Service. Mr. Marsden received a check for \$263 from Nelson.

Gary Baker resides in Kentucky. He owns a woodlot in Augusta, Maine. He works in the paper industry and travels to Maine often. In August of 1999, he received a letter from Gerald Nelson. Mr. Baker's oldest daughter had started college that fall so he felt that he could use the money from a wood harvest. He sent Nelson an email and spoke with him on the phone. He asked Nelson to give him an estimate of the amount that he would receive in stumpage. Nelson assured Baker that Baker would receive \$17,000 for the stumpage.

Understanding that the harvest would be selective, taking only 40% of the mature trees and that he would receive \$17,000, Baker entered into a contract with Nelson for the harvest of his woodlot in September of 1999. Baker learned that the harvest had begun when he received a call from a neighboring landowner. The harvest began in December of 1999. In January of 2000, Mr. Baker was in Maine on business so he called Nelson. Nelson met with him and gave him a check for \$2,700. Nelson assured Mr. Baker that



more checks would be coming. However, Mr. Baker never received another check from Nelson. He called him numerous times. On two occasions Nelson agreed to meet Mr. Baker in Maine to pay him for the wood. Nelson did not appear at either meeting.

Patty Cormier, a licensed forester employed by the Maine Forest Service performed a stump cruise of the Baker property. She determined that the average volume of harvested forest products for the lot is 400 cords, and the average value is \$17,306.

Wesley Lewis lives in Whitman, Massachusetts. He owns a woodlot in Harrison, Maine. Mr. Lewis received a letter from Nelson offering to selectively cut his wood and to pay a reasonable price for the wood. Mr. Lewis thought that Nelson was going to improve the woodlot. Nelson harvested the woodlot in the fall of 1999. Nelson made a mess on the lot, spilling fuel and destroying road improvements, which upset Mr. Lewis.

Forester Merle Ring performed a stump cruise of the lot. Mr. Lewis' lot had a considerable amount of oak veneer on it which is a particularly high value wood. Based on the cruise and using values from the most recent state published stumpage price list and log and veneer specs and prices from Bear Paw Lumber Company, where some of the logs were taken, Mr. Ring estimated that the value of the sawlogs and pulp taken from the Lewis lot to be \$24,841.00. He further estimated that the oak veneer taken from lot is worth \$5,089.00, for a total of \$29,930.00. Mr. Lewis' driveway was also destroyed as a result of Mr. Nelson's activities at a cost of \$3,000. Mr. Lewis was paid \$2,171.

Gerald Nelson, Jr. contacted Brenda Koukol of Plainville, Massachusetts about harvesting a woodlot that she owns in Harrison, Maine. Nelson told her that she would be paid \$9,000 from the harvest. She requested that he provide references. He provided references and she agreed verbally to let the harvest begin in April of 2000. After the

harvest was underway for a couple of weeks, Ms. Koukol tried to contact Nelson to find out where her payment was. He was unresponsive. She told him to stop cutting. Merle Ring later performed a stump cruise of the valuable white pine lot and conservatively estimated the harvest to be worth \$5,813. Nelson sent Ms. Koukol one check for \$1,112.

In the summer of 2000, Don Atkinson of Portland received a letter from Nelson offering to selectively cut trees on a woodlot owned by his father in Skowhegan. Mr. Atkinson's father had to go into a nursing home. Mr. Atkinson has power of attorney for his father. Nelson promised to pay Mr. Atkinson \$3,200 for his father's wood. Mr. Atkinson also told Nelson that he did not want the lot to be clear-cut and that he understood that Nelson would be responsible for cleaning up the lot. Nelson harvested the lot. He never paid Mr. Atkinson and did not clean up the lot. Mr. Atkinson called Nelson more than 75 times, but Nelson never returned his calls.

Warren Evans lives in Windham, Maine. He also owns land in Sumner, Maine. In July of 2000 he received a letter from Nelson who expressed an interest in selectively harvesting the lot in Sumner. Mr. Evans did not want the Sumner lot harvested. In response to the letter, Mr. Evans emailed a message to Nelson telling him that he was not interested in having the Sumner lot harvested but that he did need some trees cut on his Windham land. Nelson told Mr. Evans that he preferred to work without a written contract. Mr. Evans prepared an outline of his understanding of what Nelson would be harvesting. The outline specified that Nelson was to remove certain trees along with the stumps. In return Nelson was to be allowed to take five loads of timber from the property.

Nelson did not remove the stumps and he kept removing loads of timber. Mr. Evans questioned Nelson about how much wood he was cutting. Nelson told him not to worry that he would be paid \$12,000 to \$15,000. When his disregard for the terms of the agreement became clear, Mr. Evans became nervous. Nelson cut pines in violation of the 75-foot setback requirements from the river and he damaged power lines. Mr. Evans asked for Nelson's insurance information. He contacted the insurance company and was told that the policy did not cover damages to landowner's property by Nelson's logging operation. Mr. Evans asked Nelson to leave the property. Nelson did not leave. He kept cutting wood. Mr. Evans called the police. After the police arrived Nelson eventually left. Mr. Evans was never paid by Nelson. In fact, Mr. Evans had to hire third parties at higher prices to clean up the mess made by Nelson, and to refurbish damage to his road and lawn. Mr. Evans was paid \$6,000 for wood removed from his property.

Michael Hic-Quinn lives in Portland, Maine and owns a woodlot in Augusta. He has made several improvements including a pond which he stocks with fish. Nelson contacted him about harvesting wood from the lot. Nelson promised to pay him every week. In January 2001 Mr. Hic-Quinn entered into a written contract with Nelson for a harvest of the woodlot. This agreement came after Nelson agreed to a preliminary injunction in June of 2000. Yet the terms of this agreement alone violate paragraphs 1, 2, 3, & 5 of the injunction. Subsequently, the lot was harvested in the winter of 2001. Mr. Hic-Quinn testified that the wood taken from his land was worth at least \$20,000. Mr. Hic-Quinn also suffered an unspecified amount of damage to his property and landscape as a result of Nelson's activities. He has never received any payment.

## CONCLUSIONS OF LAW

Two general issues are presented to the court. First, has the defendant engaged in unfair and deceptive trade practices and second, has he violated the Consumer Solicitations Sales Act.

The Unfair Trade Practices Act, 5 M.R.S.A. § 207 provides that unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are declared unlawful. Gerald Nelson, Jr. has engaged in trade and commerce by promoting and offering his services as a logger. In construing the Act, this court must be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. § 45(a)(1)). See 5 M.R.S.A. § 207(1). A practice is deceptive if it has the tendency or capacity to deceive consumers acting reasonably under the circumstances about a material fact. See generally Federal Trade Commission Policy Statement on Deception, appended to Cliffdale Associates, 103 FTC 110, 174, et seq. (1984).

Gerald Nelson deceived every consumer in this case about two material facts. First, he misrepresented the nature and the extent of the harvest that he conducted. In each case he told the consumer that he would selectively harvest the wood. Every consumer understood this to mean that he would take some but not all of the trees in a manner that would preserve the ability to perform another harvest in the future. In each case the consumer relied on this understanding when he or she agreed to allow the harvest. Also in every instance Nelson did not selectively harvest the lot in accordance with the landowner's understanding. He performed a high-grade harvest taking more wood than he said he would take and in some instances taking trees that he was

specifically told not to take. Every consumer testified that the selective nature of the harvest was material to his or her decision to go forward with the harvest.

Second, Gerald Nelson deceived every landowner with respect to the price he would pay for the wood. He promised everyone "fair" or "reasonable" payment. He promised some of the landowners specific dollar amounts. In many instances, Gerald Nelson, Jr. paid nothing. In other instances, he made nominal payments that were far less than the fair value of the wood.

The consumers acted reasonably. They all met with Nelson or had conversations with him prior to entering into the agreement. He was prompt and responsive to every customer contact prior to commencing the harvest. Many consumers had written contracts. Two landowners, Harry Harden and Laurian Sherman never even consented to have Nelson cut their wood.

Nelson intentionally deceived the landowners by promising them selective harvest and fair payment, neither of which he delivered. He engaged in this practice from at least 1996 through 2001, even after he consented to the entry of a preliminary injunction enjoining such practices. After he harvested the wood, he avoided consumers who called to ask about payment. He did not answer his phone. He did not return messages. He did not show up at prearranged meetings with landowners.

Gerald Nelson, Jr. has also violated the Consumer Solicitations Sales Act, 32

M.R.S.A. § 4661 through 4670. Pursuant to this Act:

Where merchandise is sold or contracted to be sold, whether under a single contract or under multiple contracts, to a consumer as a result of or in connection with a salesman's direct contact accomplished by means of and including, but not limited to, a personal visit or a telephone call upon the consumer, other than at the seller's place of business, without the consumer soliciting the initial contact, the contract shall be in writing, bear

the signature of the seller and the consumer, contain the date of the transaction, the terms of the sale or offer, the name and the mailing address of the seller's permanent place of business, a statement of the consumer's right to avoid as provided in this subchapter

32 M.R.S.A. § 4662. Sections 4663 and 4664 require the seller to notify the consumer in writing of his right to cancel the contract by providing written notice of avoidance to the seller within three full business days following the day on which the contract was made. "Merchandise" is defined to include services for purposes of this statute. 32 M.R.S.A. § 4661(2).

Gerald Nelson Jr. contacted all of the eleven consumers by sending a letter offering his services. He met with the consumers who responded to the mail at the consumers' homes. None of the consumers initiated contact with Nelson at his place of business. All of the consumers were solicited by mail and by personal visit at their homes or woodlots which is not Nelson's usual place of business. Some consumers were not given a written contract. Those consumers that had written contracts did not have a three-day right to cancel. Violations of the Consumer Solicitations Sales Act constitute violations of the Unfair Trade Practices Act. 32 M.R.S.A. § 4670.

Upon finding violations of the Unfair Trade Practices Act, the court has considerable discretion to fashion appropriate remedies to do complete justice. State v. Bob Chambers Ford, 522 A. 2d 362, 366 (1987). Section 209 of the Unfair Trade Practices Act provides for restitution for consumers harmed by defendant's unlawful practices and a \$10,000 civil penalty for each intentional violation of the Act. The Court finds eleven intentional violations of the Act and accordingly imposes a civil penalty of \$10,000 per each, for a total civil penalty of \$110,000.

The court also orders restitution to consumers as follows:

- |     |                   |          |
|-----|-------------------|----------|
| 1.  | Gerald Mulvey     | \$19,498 |
| 2.  | Laurian Sherman   | \$7,958  |
| 3.  | Harry Harden      | \$8,662  |
| 4.  | Janice Bartlett   | \$26,000 |
| 5.  | Richard Marsden   | \$2,635  |
| 6.  | Gary Baker        | \$14,300 |
| 7.  | Wesley Lewis      | \$30,219 |
| 8.  | Brenda Koukol     | \$7,888  |
| 9.  | Don Atkinson      | \$3,200  |
| 10. | Warren Evans      | \$6,000  |
| 11. | Michael Hic-Quinn | \$20,000 |

The court believes that permanent injunctive relief is also necessary.

1. Gerald Nelson, Jr., his agents, servants, officers, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of this Order are permanently enjoined from:

- (a) engaging in or pursuing any home solicitation sales; and
- (b) making any direct contact with customers or potential customers at any place other than at Gerald Nelson Jr.'s permanent place of business, as defined by the Consumer Solicitation Sales Act 32 §4661(2-A), without the customer or potential customer soliciting the initial contact independently from any actions taken by Gerald Nelson Jr.; and

- (c) the use of any business name without first notifying the Department of the Attorney General; and
- (d) entering into any agreements to provide any wood harvesting services without first creating a written contract containing each of the provisions listed herein. Any agreement that does not conform to the content, disclosure and procedure requirements herein shall be void; and
- (e) making any oral or written representations to woodlot owners that mislead or confuse customers as to their unconditional right to avoid any contract entered into; and
- (f) making any oral or written representations to woodlot owners that mislead or confuse customers as to the nature and extent of the harvest to be performed, or the value of the wood to be harvested and the amount to be paid for the wood harvested in violation of the Unfair Trade Practices Act, 5. M.R.S.A. § 207; and
- (g) beginning performance of any such contract for the harvesting of wood so long as the customer has a right to cancel or avoid. At a minimum, performance of any wood harvesting contract shall not begin until a period of three full business days after the date upon which the contract was agreed to has expired.

2. Gerald Nelson, Jr., his agents, servants, officers, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of



this Order must obtain a written contract for any and all wood harvesting services, prior to harvesting, which meets the following requirements:

- (a) any written contract created pursuant to this Order must contain a clear and conspicuous disclosure that states:

**LICENSED FORESTERS ARE AVAILABLE FOR HIRE TO ASSESS YOUR WOODLOT FOR HARVESTING. YOU CAN OBTAIN A LIST OF LICENSED FORESTERS AND THE MOST RECENT STUMPAGE PRICES BY CONTACTING THE MAINE FOREST SERVICE AT STATE HOUSE STATION #22, AUGUSTA, MAINE 04333 (207) 287-2791 OR INSTATE 1-800-367-0223; and**

- (b) any written contract created pursuant to this Order must contain a clear and conspicuous disclosure that states:

**GERALD NELSON JR. HAS BEEN FOUND BY A COURT OF LAW TO HAVE VIOLATED THE MAINE UNFAIR TRADE PRACTICES ACT AND THE CONSUMER SOLICITATION SALES ACT BY ENGAGING IN DECEPTIVE, AND FRAUDULENT BUSINESS PRACTICES PURSUANT TO 5 M.R.S.A. § 207 AND 32 M.R.S.A. §§ 4661-4671. A CONSUMER LAW GUIDE IS AVAILABLE FROM THE STATE OF MAINE, DEPARTMENT OF ATTORNEY GENERAL BY CALLING (207) 626-8849; and**

- (c) any written contract created pursuant to this Order must clearly and conspicuously state:

**YOU MAY AVOID THIS CONTRACT BY GIVING WRITTEN NOTICE OF AVOIDANCE TO GERALD NELSON, JR. BY ORDINARY MAIL, POSTAGE PREPAID, WITHIN 3 (THREE) FULL BUSINESS DAYS FOLLOWING THE DAY THE CONTRACT WAS MADE. NOTICE TO GERALD NELSON JR. OF AVOIDANCE IS EFFECTIVE UPON DEPOSIT IN THE UNITED STATES MAIL; and**

(d) any written contract created pursuant to this Order must contain the following clear and conspicuous statement, as well as the landowner's signature attesting that:

**I HAVE READ AND UNDERSTAND THAT GERALD NELSON JR. HAS VIOLATED THE MAINE UNFAIR TRADE PRACTICES ACT AS WELL AS THE CONSUMER SOLICITATION SALES ACT BECAUSE OF HIS WOODLOT HARVESTING PRACTICES. I UNDERSTAND THAT THE PRICE I WILL BE PAID FOR ANY WOOD HARVESTED FROM MY LAND WILL BE EQUAL TO OR GREATER THAN THE STUMPAGE PRICE SET IN THE MAINE FOREST SERVICE STUMPAGE PRICE GUIDE FOR THE AREA IN WHICH MY WOODLOT LIES. I ALSO UNDERSTAND MY RIGHT TO AVOID THIS CONTRACT PURSUANT TO THE TERMS STATED HEREIN.**

The disclosures required by this Order are "clear and conspicuous" so long as they appear in fourteen point boldface type.

3. Gerald Nelson, Jr., his agents, servants, officers, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of this Order are further required to:

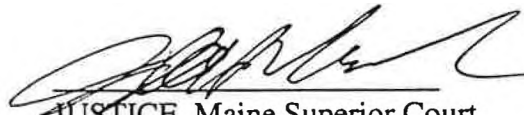
- (a) set all contract prices for any woodlot harvesting services at a value equal to or greater than the prices contained in the most recent Maine Forest Service stumpage price guide for the area in which the landowner's woodlot lies; and
- (b) provide customers with an accounting of all wood harvested from their woodlot, which shall include accurate and true scale slips for the wood harvested as well as a copy of the most recent Maine Forest Service stumpage price guide for the area and type of wood harvested; and

(c) retain a copy of each written contract and all written disclosures made to woodlot owners with whom he contracts to harvest wood for a period of three years, and to make these records available for examination by the Department of the Attorney General upon request.

This Order is effective.

Date:

Jan 18 2001

  
JUSTICE, Maine Superior Court