

5.10.24 Democratic Policy Committee Hearing - Buyer Beware: New Home Construction in Pennsylvania

Good Morning, Senators Muth, Saval and Fontana. My name is John Abel and I am the Chief Deputy Attorney General and Director of the Bureau of Consumer Protection within the Office of the Attorney General. On behalf of our office, I would like to thank you for inviting us here today to speak about consumer protection issues relating to new home construction in Pennsylvania.

Before diving deeply into the subject area, let me first speak briefly about the general role of the Bureau of Consumer Protection.

The Bureau performs a number of important functions for consumers that include mediation, investigation and litigation by the Office of Attorney General. We also have a robust public education unit in our Office that seeks to educate consumers on how they can protect themselves from fraud.

When I speak of mediation, we have a system in place, as I'm sure many of you are aware, where a consumer can file a complaint with our office which is then mediated with the business, such as the homebuilder, in an attempt to reach a satisfactory resolution. We cannot represent the consumer during the mediation, nor can we force a company to resolve a matter in a specific way during mediation. Often times we are able to get a result that is satisfactory to

the consumer as well as the business. For instance, in new home construction, sometimes there are “punchlist” items that can be ironed out during mediation to both sides’ satisfaction. These complaints are important because they are a source of information when we speak of the second role of the Bureau, which is to investigate.

During the course of an investigation, we have the authority to issue administrative subpoenas to the business to get more information; we also may interview consumer victims and reach out to other interested parties such as local code officers or municipalities, especially when it involves home construction issues.

Lastly, if the Office perceives a “pattern or practice” of violations of the law, we may then pursue a legal action on behalf of the public interest. For instance we may seek to settle with the business by way of an assurance of voluntary compliance that may result in restitution as well as injunctive relief and civil penalties. If we are not able to resolve the matter by way of a settlement, then the Office has the authority to bring a lawsuit in the public interest under the Pennsylvania Unfair Trade Practices and Consumer Protection Law. Under this Law, the Attorney General has the authority to seek restitution under certain

circumstances and also has the authority to seek civil penalties as well as appropriate injunctive relief.

We have relied on the Consumer Protection Law in taking legal actions against home builders across the Commonwealth. That Law sets forth twenty-one different ways that a business can engage in illegal, unfair, or deceptive acts or practices. Among other things, the Act makes it illegal to fail to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services.

Next, let me speak briefly about the kinds of issues that we have seen in our investigations and litigation involving new home construction.

We have taken legal action in a case in south central PA based on consumer complaints alleging that the defendants:

- Accepted a deposit for construction of new homes and then failed to begin or complete the construction in a timely manner.
- Failed to complete construction as contracted.
- Failed to honor written warranties.
- Failed to perform work in a satisfactory, workman-like manner which often resulted in additional damage to the property.

Issues identified in consumer complaints include: improper installation of drainage tanks, hardwood flooring, heating and cooling systems, windows, ventilation, plumbing, roofing, railings, countertops, siding, cabinetry and installation.

We obtained a judgment in state court that included restitution for over 70 consumers for more than \$760,000. The main principal then filed bankruptcy in Maryland, and we followed him and filed an action there to object to a discharge. We prevailed and got an order holding debts were not dischargeable in that or any future bankruptcy.

In another instance, we brought an action in northeastern Pennsylvania for, among other things, failure to perform work in a timely or workman-like manner that included complaints about improperly installed vinyl siding, deficient drywall installation as well as cracks in the foundation of a new home. The settlement in that case included money for restitution and injunction against future violations.

This office also filed a lawsuit against a home builder based in suburban Philadelphia regarding its alleged misrepresentations to consumers by failing to provide new homes that were weather-resistant. Among other things, this lawsuit alleged that the builder failed to comply with manufacturers'

recommendations, building codes, and accepted industry practices involving the installation of stucco, weather barriers and flashing. This shoddy work as alleged led to water infiltration, leaving consumers with significant damages to their homes such as rot, decay and mold. This case also alleged that the builder failed to comply with the implied warranty of habitability as well as the builder's implied warranty of workmanship.

According to the Commonwealth, the builder failed to install a means of drainage and failed to properly install the weather-resistant underlayment or barrier. This poor construction contained latent defects that led to certain failures in the consumers' homes and compromised the structural integrity and impairment of home values, according to the lawsuit. The builder eventually filed for bankruptcy and the Commonwealth has a pending claim in the bankruptcy for restitution as allowed for by law.

In sum, our office has had experience mediating, investigating and litigating issues with new home construction. As I mentioned, these issues range from the relatively minor "punch list" issues to the more significant that I referenced as part of the litigation we have brought. I would add that these cases tend to be fact-specific and resource-intensive. And as we have seen, the builder may end up in bankruptcy which often occasions a need for a change in strategy.

Our office would be happy to take a look at any proposed changes in the law and answer any questions from the panel.