

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA ex rel. )  
THOMAS J. MILLER, 99AG25112 )  
ATTORNEY GENERAL OF IOWA )  
 )  
Plaintiff, )  
v. )  
 )  
TIERNEY BROTHERS CONSTRUCTION, LLC, )  
SEAN TIERNEY AND TRACY TIERNEY, )  
 )  
Defendants. )

EQUITY NO. CE CE-67104

CONSENT JUDGMENT

10 NOV 23 PM 12:09

This Court, recognizing that the State of Iowa, by Attorney General Thomas J. Miller and Assistant Attorney General Benjamin E. Bellus, and the Defendants, Tierney Brothers Construction, LLC, Sean Tierney and Tracy Tierney, represented by Attorney Christopher D. Spaulding, have consented to the entry of this judgment, finds as follows:

1. The Court has jurisdiction over the parties and the subject matter of this litigation.
2. Venue is proper in Polk County, Iowa.
3. Plaintiff is the State of Iowa, ex rel. Attorney General Thomas J. Miller, the duly elected Attorney General of Iowa. The Attorney General of Iowa is expressly authorized pursuant to Iowa Code §§ 714.16(7) and 555A.6(2) to file a civil action against any person who has engaged in a practice declared to be unlawful under Iowa Code § 714.16 and/or Iowa Code chapter 555A.
4. Defendant Sean Tierney is an owner, operator and managing agent of a home repair and contractor business registered with the Minnesota Secretary of State as Tierney Brothers Construction, LLC. At all times relevant to the transactions from which this suit arose, the places of business for Sean Tierney under any business name were 6731 137<sup>th</sup> Avenue, NW,

Ramsey, Minnesota and 5220 NE 14<sup>th</sup> Street, Des Moines, Iowa. Defendant Sean Tierney is named in his individual capacity as well as his past or present corporate capacities.

5. Defendant Sean Tierney formulated, directed, controlled, was a primary participant in, and had, or should have had, knowledge of the acts and practices of Tierney Brothers Construction, LLC, constituting the violations of Iowa law as alleged herein and, at all times relevant hereto, was an officer, director, owner, and/or agent of Tierney Brothers Construction, LLC.

6. Defendant Tracy Tierney is an owner, operator and managing agent of a home repair and contractor business registered with the Minnesota Secretary of State as Tierney Brothers Construction, LLC. At all times relevant to the transactions from which this suit arose, the places of business for Tracy Tierney under any business name were 6731 137<sup>th</sup> Avenue, NW, Ramsey, Minnesota and 5220 NE 14<sup>th</sup> Street, Des Moines, Iowa. Defendant Tracy Tierney is named in her individual capacity as well as her past or present corporate capacities.

7. Defendant Tracy Tierney formulated, directed, controlled, was a primary participant in, and had, or should have had, knowledge of the acts and practices of Tierney Brothers Construction, LLC, constituting the violations of Iowa law as alleged herein and, at all times relevant hereto, was an officer, director, owner, and/or agent of Tierney Brothers Construction, LLC.

8. Defendant Tierney Brothers Construction, L.L.C. is an incorporated business entity in the state of Minnesota which provides home repair and contractor services to a predominately residential market in Minnesota, Colorado and Iowa. Defendant is registered as a "contractor" with Iowa Workforce Development to do business in Iowa. At all times relevant to the transactions from which this suit arose, the Iowa place of business for Tierney Brothers, Inc, was

a hotel room located at 5220 NE 14<sup>th</sup> Street, Des Moines, Iowa and the main corporate office was located at 6731 137<sup>th</sup> Avenue, NW, Ramsey, Minnesota.<sup>1</sup>

9. The phrase "home repairs or contractor services," as used herein, includes any work on any residential dwelling or other structure; and any work on other things commonly found on residential real property including, but not limited to, garages, basements, interiors, roofs, porches, driveways, sidewalks, patios and fences.

10. Unless otherwise specified, the term "Defendants" as referred to herein includes Tierney Brothers Construction, LLC, Sean Tierney and Tracy Tierney; as well as any corporate name or trade name under which they operated, or are operating, a business; and their representatives, agents, independent contractors, assigns, successors, or other business entities, whose acts, practices or policies are or were directed, formulated or controlled by Tierney Brothers Construction, LLC, Sean Tierney or Tracy Tierney.

11. The State alleges that Defendants violated Iowa Code Chapter 555A by selling home repairs or contractor services at a place other than the Defendants' place of business and,:

- a. at the time that the agreement to perform the work was made, failing to disclose the consumers' right to cancel in 10 point boldface type on the front of the contract or receipt, as required by Iowa Code § 555A.2;
- b. at the time that the agreement to perform the work was made, failing to provide the consumers with a "Notice of Cancellation" drafted in the required form and content, as required by Iowa Code § 555A.3;
- c. at the time that the agreement to perform the work was made, failing to furnish to consumers two copies of the notice of cancellation which included the date by which the consumers must give notice of cancellation, as required by Iowa Code § 555A.4(1);
- d. at the time that the agreement to perform the work was made, failing to orally inform the consumers of their right to cancel, as required by Iowa Code § 555A.4(3);

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<sup>1</sup> The Minnesota address is alternatively listed by Defendants as 6731 137<sup>th</sup> Avenue, NW, Anoka, Minnesota.

e. misrepresenting the consumers' right to cancel the transaction as provided in Iowa Code § 555A.4(4); and

f. failing to subsequently honor valid cancellations by consumers and failing to refund all payments made under the contracts or sales within ten (10) business days of the cancellation, as required by Iowa Code § 555A.4(5).

12. The State further alleges that Defendants violated Iowa Code § 714.16(2)(a) by:

a. pursuant to Iowa Code § 555A.6(2), committing the violations of Iowa Code Chapter 555A referenced in paragraph 11, above;

b. representing to consumers that Defendants were contacting the consumers pursuant to a directive from a state agency, or otherwise in partnership with a state agency; when in fact the contact was solely a marketing effort by the Defendants and no agency of the State was involved in any manner;

c. representing to consumers that, as part of the services provided under the contract, Defendants would perform the duties of an insurance adjuster with the consumers' insurance companies when, in fact, Defendants could not legally provide said services; and

d. employing contracts which failed to disclose material terms of the contracts between the Defendants and the consumers but contained provisions which, when taken together, forced the consumers to accept whatever agreement was subsequently and independently reached between the Defendants and the consumers' insurance companies in regards to the scope of work for repairs, the materials to be used and the total price - or the consumers were forced to pay the Defendants 25% of the total contract price agreed upon between Defendants and the consumers' insurance companies.

13. Defendants deny the State's allegations but agree to entry of this Consent Judgment.

14. Defendants waive their right to a judicial or administrative hearing on any issue of fact or law set forth in the petition filed by plaintiff herein.

15. It is in the public interest that permanent injunctive relief be issued herein to protect the people of the State of Iowa from any further losses from any similar conduct by the Defendants in Iowa in the future.

16. The Court finds that an Order should be entered in this matter.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that, pursuant to Iowa

Code § 714.16(7):

17. Defendants Tierney Brothers Construction, LLC, Sean Tierney and Tracy Tierney; and their employees, agents, successors, assigns and all other persons acting in concert with or participating with Defendants, who have actual or constructive notice of this order, are hereby permanently RESTRAINED and ENJOINED from:

a. failing to comply in all respects with the requirements of the Iowa Door-to-Door Sales Act, Iowa Code Chapter 555A;

b. misrepresenting the Defendants' qualifications, training, certifications, licences, experience, or any other information which would be material to consumers when choosing a contractor; including but not limited to, representing that Defendants will provide services as adjusters with the consumers' insurance companies when the Defendants have not met the licensing requirements to be public adjusters under Iowa Code § 522C.4;

c. misrepresenting the Defendants' associations, affiliations, partnerships, or any other information which would be material to a consumers when choosing a contractor; including but not limited to, representing that Defendants are operating at the directive of, or under any other affiliation with, the Iowa Insurance Division - unless such an affiliation does in fact exist;

d. employing any contract or other device which obligates consumers to pay damages to the Defendants for cancelling said contract unless all material provisions of the contract (e.g. scope of work, materials to be used, total cost to the consumer, etc.) are disclosed to the consumer before the consumer signs the contract; and

e. employing any contract, sales strategy, marketing device or other means which would serve to deprive consumers of the ability to enforce all decision-making rights, legal rights and legal remedies with third parties, such as their insurance companies.

18. The following shall apply should the Court find that Defendants Tierney Brothers Construction, LLC, Sean Tierney and Tracy Tierney violated this Consent Judgment:

a. Defendants shall be permanently restrained and enjoined from owning, operating, controlling, directing, or otherwise profiting from any business in the State of Iowa that in any manner offers or provides home repairs or contractor services;

b. Defendants shall also be ordered not to advertise or offer any home repairs or contractor services to Iowa consumers nor enter into any contracts to provide home repairs or contractor services to Iowa consumers;

c. Defendants shall be ordered not to advise, control, direct, or otherwise exercise any authority to any extent regarding a business which, in part or in whole, provides home repairs or contractor services, including, but not limited to business practices, hiring decisions, or the like; and

d. Defendants may also be found guilty of contempt of this Court, pursuant to Iowa Code Chapter 665 (2009), and as that chapter is subsequently amended.

The Order under this paragraph shall be in addition to other remedies the Court may Order in the event of Defendants' non-compliance with this Consent Judgment.

19. Pursuant to Iowa Code § 714.16(7), the Court may impose a civil penalty of not more than \$5,000 for each day of intentional violation of this Consent Judgment in addition to any other remedy allowed by law.

20. This Consent Judgment shall not bar the State or any other governmental entity from enforcing other laws or rules against Defendants relating to any of Defendants' practices, including those alleged in the petition.

21. This Consent Judgment shall not be construed so as to affect the legal or equitable rights of any individual citizen to initiate court proceedings against Defendants and to obtain any relief authorized by law or regulation.

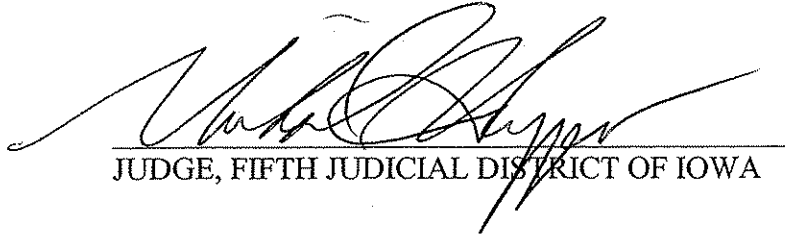
22. Pursuant to Iowa Code § 714.16(11), Defendants shall pay any and all court costs incurred in this action.

23. The Court reserves jurisdiction over this action in order to take any further action deemed necessary to enforce this judgment and to award the State judgment for any costs, including attorneys fees, it incurs in the event of noncompliance by Defendants. Such costs may include court costs in excess of those authorized by paragraph 22, above.

24. The mailing of a copy of this signed and filed Consent Judgment to Defendants shall constitute notice and acceptance by Defendants of all the terms of this Consent Judgment;

Defendants have waived the necessity of having the Consent Judgment served upon them.

IT IS SO ORDERED this 23<sup>rd</sup> day of November, 2010.



JUDGE, FIFTH JUDICIAL DISTRICT OF IOWA

Agreed and approved as to form and content:

Date [Signature]  
Defendant

Tierney Brothers Construction, LLC

By affixing a signature to this Consent Judgment, the individual signing on behalf of Tierney Brothers Construction, LLC, hereby represents that (he/she) has legal authority to bind the Corporate Defendant to the terms and provisions of this Consent Judgment.

By: [Signature]  
Title: owner

Subscribed and sworn to before me this 9<sup>th</sup> day of November ~~October~~, 2010.



[Signature]  
Notary Public in and for the State of Iowa

Date 11-9-10

[Signature]  
Sean Tierney, Individually  
Defendant

Subscribed and sworn to before me this 9<sup>th</sup> day of November ~~October~~, 2010.



[Signature]  
Notary Public in and for the State of Iowa

Date 11-1-10

[Signature]  
Tracy Tierney, Individually  
Defendant

Subscribed and sworn to before me this 1 day of November ~~October~~, 2010.




[Signature]  
Notary Public in and for the State of Minnesota

Date 11-9-10

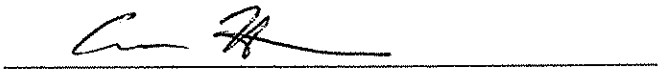
[Signature]  
Christopher D. Spaulding  
Attorney for the Defendants



Date 11-15-2010

  
Benjamin E. Bellus  
Attorney for the State of Iowa  
Consumer Protection Division

Date 11/16/2010

  
Adam P. Humes  
Attorney for the State of Iowa  
Administrative Law Division

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