

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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STATE OF IOWA ex rel.  
THOMAS J. MILLER,  
ATTORNEY GENERAL OF IOWA

Plaintiff,

v.

DALE GORDON TERRY d/b/a TERRY'S  
CONTRACTORS,

Defendants.

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**CASE NO. 05771 EQCE084744**

CONSENT JUDGMENT AND  
PERMANENT INJUNCTION

This Court, recognizing that the State of Iowa, by Attorney General Thomas J. Miller and Assistant Attorney General Benjamin E. Bellus, and Dale Gordon Terry, Defendant appearing pro se, 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), 555A.6(2) and 103A.71(6)(b) to file a civil action against any person who has engaged in a practice declared to be unlawful under Iowa Code § 714.16, Iowa Code Chapter 555A, and/or Iowa Code § 103.71.
4. Defendant Dale Gordon Terry is the sole owner, officer, operator and managing agent of an unincorporated sole proprietorship named "Terry's Contractors". At all times relevant to this action, the residence and business address for Dale Gordon Terry d/b/a Terry's Contractor's was located a 1310 Norton Avenue, Des Moines, Iowa.
5. Defendant Terry is named in his individual capacity as well as his past or present corporate capacities.

6. Defendant Terry and Terry's Contractors have been offering and selling home repair and contractor services for at least seventeen years, but first registered as a "contractor" with Iowa Workforce Development on October 2, 2018. Terry's Contractors is not registered with the Iowa Secretary of State as a business in any capacity. At all times relevant to the transactions from which this suit arose, the place of business for Terry's Contractors was the same address as Defendant Terry's residence located at 1310 Norton Avenue, Des Moines, Iowa.

7. Defendant Terry formulated, directed, controlled, was a primary participant in, and had, or should have had, knowledge of the acts and practices of Terry's Contractors constituting the violations of Iowa law as alleged herein and, at all times relevant hereto, was an officer, director, sole owner, and/or managing agent of Terry's Contractors.

8. Unless otherwise specified, the term "Defendant" as referred to herein includes Dale Gordon Terry d/b/a Terry's contractors as well as any corporate name or trade name under which he operated, or is operating, a business; and his representatives, agents, independent contractors, assigns, successors, or other business entities, whose acts, practices or policies are or were directed, formulated or controlled by Dale Gordon Terry.

9. The phrase "home repairs or contractor services," as used herein, includes any labor or materials provided for work on any residential dwelling or commercial structure; and any labor or materials provided for work on other things commonly found on residential or commercial real property including, but not limited to, garages, pole buildings, out buildings, basements, foundations, interiors, roofs, porches, driveways, sidewalks, patios, fences, landscaping and snow removal.

10. The term "merchandise," as used herein, includes any objects, wares, goods,

commodities, intangibles, securities, bonds, debentures, stocks, real estate or services.<sup>1</sup>

11. The term “catastrophe,” as used herein, means a natural occurrence including but not limited to fire, earthquake, tornado, windstorm, flood, or hail storm, which damages or destroys residential real estate.<sup>2</sup>

12. The phrase “residential contractor,” as used herein, means a person in the business of contracting to repair or replace residential roof systems or perform any other exterior repair, exterior replacement, or exterior reconstruction work resulting from a catastrophe on residential real estate or a person offering to contract with an owner or possessor of residential real estate to carry out such work.<sup>3</sup>

13. The State alleges Defendant violated Iowa Code § 103A.71 by acting as a residential contractor and contracting to provide goods and services to repair damage to residential real estate resulting from a catastrophe and then:

- a. violating Iowa Code § 103A.71(4)(a) by failing to provide each consumer with a fully completed duplicate “Notice of Contract Obligations and Rights” in at least ten-point bold type with the format and content required by; and
- b. violating Iowa Code § 103A.71(4)(b) failing to obtain the consumer’s signature on a “Notice of Contract Obligations and Rights” prior or contemporaneously with entering into the contract.

14. The State alleges that Defendant violated Iowa Code Chapter 555A by selling home repairs or contractor services that were valued at more than \$25.00 to consumers for personal, family or household purposes, at a place other than the Defendant’s place of business and then:

- a. violating Iowa Code § 555A.2 by failing to furnish at the time of the transaction a fully completed receipt or copy of any contract containing the notification of the consumers’ cancellation rights required by this subsection,

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<sup>1</sup> Iowa Code § 714.16(1)(i).

<sup>2</sup> Iowa Code § 103A.71(1)(a).

<sup>3</sup> Iowa Code § 103A.71(1)(b).

and in the format and language required by this subsection;

- b. violating Iowa Code § 555A.3 by failing to furnish two copies of a completed “Notice of Cancellation”, containing the statutorily-mandated form and language, to consumers at the time that the parties entered into a contract;
  - c. violating Iowa Code § 555A.4(1) by failing to furnish two copies of the “Notice of Cancellation” to consumers, and complete both copies by entering the name of the seller, the address of the seller’s place of business, the date of the transaction, and the date by which the consumers may give notice of cancellation;
  - d. violating Iowa Code § 555A.4(3) by failing to orally inform consumers of their right to cancel the contract on or before the third business day after the sale; and
  - e. violating Iowa Code § 555A.4(5) by failing to honor valid cancellations by consumers and refund all payments made under the contracts within ten (10) business days of the cancellation.
15. The State further alleges that Defendant violated Iowa Code § 714.16(2)(a) by:
- a. pursuant to Iowa Code § 103A.7(6)(b), committing each of the violations listed in Count I, paragraph 13 above;
  - b. pursuant to Iowa Code § 555A.6(2), committing each of the violations listed in Count II of the Petition, paragraph 14 above;
  - c. representing to consumers that Defendant would begin home repairs or contractor services within a promised time period, without a reasonable basis for such representations;
  - d. representing to consumers that Defendant would complete home repairs or contractor services within a promised time period, without a reasonable basis for such representations; and
  - e. representing to consumers that Defendant would complete home repair or contractor services in a specific manner and then failing to provide said services to the agreed specifications.
  - f. contracting with consumers to provide home repair and contractor services, and then failing to provide labor, materials, or reimbursement of the consumers’ payment;
  - g. accepting payment from consumers for the provision of home repair and

contractor services and then failing to provide labor or materials, or repay the payment to consumers;

- h. accepting payment from consumers for home repair and contractor services and then failing to timely pay subcontractors and/or materials providers for materials and services provided on the consumers' contract; thus placing the consumers at risk that the unpaid third parties would place mechanics liens against the consumers' properties or otherwise force the consumers to pay twice for the same work or materials;
- i. contracting with consumers to provide home repair and contractor services and then failing to perform the home repair and contractor services in a workmanlike manner, and/or in a manner within industry standards, and/or in a manner that complied with manufacturer standards, and/or building codes; thus placing the consumers at risk of physical and/or financial harm, and/or causing consumers physical and/or financial harm;
- j. contracting with consumers to provide home repair or contractor services and then only partially completing the contract to the point where the consumer were in a worse condition, and at greater risk of further harm from the environment or criminal activity;
- k. failing to disclose to consumers at any time before entering into a contract for home repair or contractor services that the Defendant previously failed to complete multiple contracts for home repair or contractor services and had multiple civil judgments against Defendant for breach of contract and other claims relating to the failure to perform home repair or contractor services; and
- l. refusing to respond to consumer complaint inquiries, or responding to consumer inquiries in a manner that delayed, hindered, or otherwise prevented, consumers from limiting their losses.

16. Defendant admits to the State's allegations contained in paragraphs 13, 14 and 15 and agrees to entry of this Consent Judgment.

17. Defendant waives the right to a judicial or administrative hearing on any issue of fact or law set forth in the Petition filed by the State herein.

18. 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 Defendant in Iowa in the future.

19. 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):

20. Defendant Dale Gordon Terry is hereby permanently RESTRAINED and ENJOINED from:

- a. owning, operating, controlling, directing, or otherwise profiting as an owner or investor from any business in the State of Iowa that in any manner offers or provides home repairs or contractor services;
- b. advertising or offering any home repair or contractor services to Iowa consumers on behalf of himself or any business in which he holds any ownership or managing agent status, nor entering into any contracts to provide home repairs or contractor services to Iowa consumers on behalf of himself or any business in which he holds any ownership or managing agent status; and
- c. advising, controlling, directing, or otherwise exercising any authority to any extent regarding a business which, in part or in whole, provides home repair or contractor services, including, but not limited to business practices, hiring decisions, or the like.<sup>4</sup>

21. Pursuant to Iowa Code Chapter 665, Defendant may be found guilty of contempt of this Court for violation of this Consent Judgment.

22. 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.

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<sup>4</sup> For point of clarification, Defendant Terry may act as an hourly or salaried employee for an unrelated third-party business that provides home repairs or contractor services so long as Defendant does not violate the ownership or management limitations set out in paragraph 20. Defendant Terry may not accept any form of compensation,

23. Pursuant to Iowa Code § 714.16(7), judgment in the amount of \$51,875.00 is hereby entered against Defendant jointly and severally for reimbursement of Iowa consumers listed in the attached Exhibit “A”, and in a manner and apportionment solely at the discretion of the State.<sup>5</sup> Defendant Terry has informed the State that Defendant does not have the financial ability to pay the judgment in full. The State has agreed to a repayment plan commensurate with Defendant’s represented financial condition in reliance on the Defendant’s representations. The State reserves the right to demand greater payment(s) should credible evidence surface that Defendant either misrepresented Defendant’s financial status or that the Defendant has subsequently improved his financial situation. At this time, Defendant shall pay the judgment in the following manner:

- a. All payments shall be delivered to:  
Susan Kerr, Investigator, (or her successor)  
Iowa Department of Justice  
Consumer Protection Division  
1305 East Walnut Street, Second Floor  
Des Moines, IA 50319
- b. Defendant shall make payments of \$200.00 per month, beginning on September 1, 2019, and continue to pay said installment on or before the first (1st) day of each consecutive month until the full judgment amount has been paid. The State may claim interest at the rate of 10% per annum on any payments not received by the Consumer Protection Division by the fifteenth (15<sup>th</sup>) day of the month in which that payment is due. The provisions of this Consent Judgment do not preclude Defendant from paying this judgment in advance of this payment schedule if Defendant so chooses.
- c. Should Defendant fail to make to make full payment on any two months within any 12-month period, whether nonconsecutive or otherwise, the State may cancel the payment plan and collect the full judgment.
- d. Notwithstanding subparagraph “c” of this paragraph, should Defendant

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including a donation or “love gift”, for personally providing home repairs or contractor services.

<sup>5</sup> The State acknowledges that some consumers may have independently obtained judgments or refunds against the Defendant. It is not the State’s intention to obtain duplicative recoveries for consumers for the same transactions and the final payment due under this Consent Judgment will be reduced in the amount of any payment(s) made to consumers arising from the same transactions providing a basis for this action, so long as the Defendant produces credible evidence of payment.

encounter financial difficulties that might temporarily impair his ability to comply with the payments scheduled under this section, Defendant may request a temporary reduction or deferral in the payments from the Attorney General. Such a reduction or deferral may be granted at the Attorney General's sole discretion, shall be granted only in writing, and shall not constitute a waiver by the Attorney General of any terms or provisions contained within this Consent Judgment. The Attorney General may demand evidence of Defendant's financial condition and/or statements to be made under oath as a condition for any reduction or deferral of payment.

24. At any point after the date of filing of this Consent Judgment, Defendant may satisfy a reimbursement order on behalf of any consumer listed in Exhibit A by obtaining that consumer's voluntary and written permission to complete the consumer's contract. Consumers listed in Exhibit A are under no obligation to accept Defendant's offer to complete the consumer's contract in lieu of reimbursement under this Consent Judgment. Upon receipt of written confirmation from said consumer that the consumer's contract was fully performed by the Defendant or his agent in a workmanlike manner that is fully compliant with industry standards and local building codes, the State will release the specific claim for the consumer incorporated within Exhibit A as satisfied.

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

26. 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 Defendant and to obtain any relief authorized by law or regulation.

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

28. 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



attorney fees, it incurs in the event of noncompliance by Defendant. Such costs may include court costs in excess of those authorized by paragraph 27, above.

29. The mailing of a copy of this signed and filed Consent Judgment to Defendant Dale Gordon Terry shall constitute notice and acceptance by Defendant of all the terms of this Consent Judgment; Defendant has waived the necessity of having the Consent Judgment served upon him.

30. The hearing scheduled for August 16, 2019 is cancelled.

**SO ORDERED.**

Agreed and approved as to form and content:

Date 7-10-19

Dale G. Terry  
Dale Gordon Terry, Individually and as  
Owner of Terry's Contractors  
Defendant



Subscribed and sworn to before me this 10<sup>th</sup> day of July, 2019.

J.M. Kerr  
Notary Public in and for the State of Iowa

Date July 10, 2019

B. E. Bellus  
Benjamin E. Bellus  
Assistant Attorney General  
Attorney for the State of Iowa

Copies to:

Dale Gordon Terry  
1310 Norton Avenue  
Des Moines, IA 50314

Benjamin E. Bellus  
IOWA DEPARTMENT OF JUSTICE  
Consumer Protection Division  
1305 East Walnut, Second Floor  
Des Moines, IA 50319

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DALE GORDON TERRY d/b/a TERRY'S  
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Defendants.

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**CASE NO. 05771 EQCE084744**

**CONSENT JUDGMENT  
EXHIBIT A  
(CONSUMER REIMBURSEMENT)**

1. Luz Landucci	3,475.00
2. Carlotta Muhammad	4,150.00
3. Brenda Myers	5,000.00
4. Alamanda Nazworthy	1,000.00
5. Sahr Saidu	28,800.00
6. Richard Savage & Laura Bonwell	3,500.00
7. Maha Swadi	700.00
8. Mary Tarter	250.00
9. Phillip & Susan Tilton	5,000.00
	<u>=====</u>
	\$51,875.00



State of Iowa Courts

**Type:** ORDER FOR JUDGMENT

**Case Number**      **Case Title**  
EQCE084744      STATE OF IOWA EX REL MILLER VS DALE GORDON TERRY

So Ordered

A handwritten signature in cursive script, reading 'Samantha Gronewald'.

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Samantha Gronewald, District Court Judge  
Fifth Judicial District of Iowa