

Jonathan E. Trotter, #27650
Assistant Attorney General
Office of the Kansas Attorney General
120 S.W. 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
Tel: (785) 296-3751
Fax: (785) 291-3699
jon.trotter@ag.ks.gov

IN THE DISTRICT COURT OF THOMAS COUNTY, KANSAS
FIFTEENTH JUDICIAL DISTRICT

| | | |
|----------------------------------|---|----------|
| STATE OF KANSAS, <i>ex rel.</i> |) | |
| DEREK SCHMIDT, Attorney General, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. |
| |) | |
| |) | |
| ENERGY GUARD MIDWEST, LLC |) | |
| |) | |
| Defendant. |) | |
| |) | |

(Pursuant to K.S.A. Chapter 60)

PETITION

COMES NOW the Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Kansas Attorney General, by and through counsel, Jonathan E. Trotter, Assistant Attorney General, and for its cause of action against Defendant, alleges and states as follows:

PARTIES

1. Derek Schmidt is the duly elected, qualified and acting Attorney General for the State of Kansas.

2. The Attorney General's authority to bring this action is derived from the statutory and common law of the State of Kansas, specifically the Kansas Roofing Registration Act, K.S.A. 2017 Supp. 50-6, 121 *et seq.*, and the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*

3. Defendant Energy Guard Midwest, LLC (“Defendant”) is a Kansas limited liability company.

4. Defendant has a principal place of business at 2124 North Garland Street, Wichita, Kansas 67203.

5. Defendant may be served with process at its principal place of business or wherever Defendant may be found.

6. All references to the Defendant herein include acts performed individually, in concert, or by or through employees, agents, representatives, affiliates, assignees and successors.

JURISDICTION AND VENUE

7. This Court has personal and subject matter jurisdiction over this controversy by the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*, specifically K.S.A. 50-638(a).

8. Venue is proper in the Fifteenth Judicial District (Thomas County), pursuant to K.S.A. 50-638(b).

THE KANSAS ROOFING REGISTRATION ACT

9. The Kansas Roofing Registration Act, K.S.A. 50-6,121 *et seq.*, requires all roofing contractors offering roofing services in the state of Kansas to obtain a valid registration certificate through the Office of the Kansas Attorney General.

10. Any violation of the Kansas Roofing Registration Act shall be deemed to be a deceptive or unconscionable act or practice under the provisions of the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.* pursuant to the Kansas Roofing Registration Act, K.S.A. 2017 Supp. 50-6,138(a).

ALLEGATIONS COMMON TO ALL COUNTS

11. All of the foregoing paragraphs 1-10 are hereby incorporated by reference.
12. At all times relevant hereto, and in the ordinary course of business, Defendant acted as a “roofing contractor,” as that term is defined by K.S.A. 50-6,122(a)(1), and as a “supplier,” as that term is defined by K.S.A. 50-624(l).
13. At all times relevant hereto, and in the ordinary course of business, the Defendant made or caused to be made “consumer transactions,” as that term is defined by K.S.A. 50-624(c).
14. Since at least 2014, Defendant has engaged in the business of and acted in the capacity of a roofing contractor within the State of Kansas.
15. Specifically, Defendant has offered to engage in or solicited roofing-related services and performed roofing services for a fee.
16. Defendant contracted to perform roofing services for at least one (1) Kansas consumer.
17. Defendant applied for a Kansas roofing registration certificate with the Office of the Kansas Attorney General in October 2014.
18. Defendant was issued a Kansas roofing registration certificate on November 10, 2014.

Thomas County Roofing

19. On July 24, 2017, Defendant contracted to perform roofing services with one Kansas consumer, J.M., in Colby, Thomas County, Kansas.
20. The consumer paid Defendant \$3,000.00 for roofing services on July 24, 2017.
21. Defendant deposited Consumer’s check on July 24, 2017.

22. From July 24, 2017 to November 5, 2017, J.M. made several calls to Defendant's company in Wichita, Kansas and Colby, Kansas

23. After making assurances on November 6, 2017 Defendant, that the supplies were ordered, Defendant did not perform the roofing services.

24. On November 7, 2017, J.M. called Tim Henry, a representative from Defendant's company, and left a message requesting a refund.

25. To date, no work has been performed and no refund has been issued from Defendant.

CLAIMS

COUNT I

KANSAS ROOFING REGISTRATION ACT

26. All of the foregoing paragraphs 1-25 are hereby incorporated by reference.

27. Defendant abandoned a roofing contract without legal grounds after a deposit of money or other consideration had been paid, in violation of K.S.A. 2017 Supp. 50-6,133(a)(1).

28. Defendant's violation of K.S.A. 2017 Supp. 50-6,133(a)(1) is a deceptive or unconscionable act or practice, pursuant to K.S.A. 50-6,138(a), and thus a violation of K.S.A. 50-626, *et seq.*, or K.S.A. 50-627, *et seq.*

29. Defendant's deceptive or unconscionable acts or practices are violations for which the Court should assess a penalty in the amount of \$10,000.00 per violation, pursuant to K.S.A. 50-636, in the aggregate of \$10,000.00.

COUNT II

KANSAS ROOFING REGISTRATION ACT

30. All of the foregoing paragraphs 1-29 are hereby incorporated by reference.

31. Defendant diverted funds or property entrusted to a roofing contract, in violation of K.S.A. 2017 Supp. 50-6,133(a)(2).

32. Defendant's violation of K.S.A. 2017 Supp. 50-6,133(a)(2) is a deceptive or unconscionable act or practice, pursuant to K.S.A. 50-6,138(a), and thus a violation of K.S.A. 50-626, *et seq.*, or K.S.A. 50-627, *et seq.*

33. Defendant's deceptive or unconscionable acts or practices are violations for which the Court should assess a penalty in the amount of \$10,000.00 per violation, pursuant to K.S.A. 50-636, in the aggregate of \$10,000.00.

COUNT III
KANSAS ROOFING REGISTRATION ACT

34. All foregoing paragraphs 1-33 are hereby incorporated by reference.

35. In the course of making, or causing to be made, consumer transactions with at least one (1) Kansas consumer, Defendant engaged in fraudulent or deceptive acts or practices or misrepresentation of products, services or qualifications as a roofing contractor, in violation of K.S.A. 2017 Supp. 50-6,133(a)(3).

36. Defendant's violation of K.S.A. 2017 Supp. 50-6,133(a)(3) is a deceptive or unconscionable act or practice, pursuant to K.S.A. 50-6,138(a), and thus a violation of K.S.A. 50-626, *et seq.*, or K.S.A. 50-627, *et seq.*

37. Defendant's deceptive or unconscionable acts or practices are violations for which the Court should assess a penalty in the amount of \$10,000.00 per violation, pursuant to K.S.A. 50-636, in the aggregate of \$10,000.00.

COUNT IV
KANSAS CONSUMER PROTECTION ACT

38. All of the foregoing paragraphs 1-37 are hereby incorporated by reference.

39. In the course of making, or causing to be made, consumer transactions with at least one (1) Kansas consumer, the Defendant entered into a consumer transaction from which the consumer was unable to receive a material benefit of the subject of the transaction, in violation of K.S.A. 50-627(b)(3).

40. Each consumer transaction from which the consumer was unable to receive a material benefit of the subject of the transaction is an unconscionable act or practice in violation of K.S.A. 50-627, for which the Court should assess a penalty in the amount of \$10,000.00 per violation, in the aggregate amount of \$10,000.00.

PRAYER FOR RELIEF

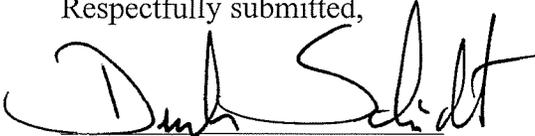
WHEREFORE, Plaintiff prays for judgment as follows:

- A. The above-listed acts and practices be declared violations of the Kansas Roofing Registration Act and the Kansas Consumer Protection Act, pursuant to K.S.A. 50-632(a)(1);
- B. Defendant's Kansas Roofing Registration Certificate, #14-010719, be permanently revoked, pursuant to K.S.A. 50-632(c)(5);
- C. Defendant be permanently enjoined from operating as a roofing contractor in the State of Kansas;
- D. Defendant pay reasonable investigative fees and expenses to Plaintiff, pursuant to K.S.A. 50-636(c);
- E. Defendant pay \$3,000.00 to be disbursed to the above-referenced consumer as restitution, pursuant to K.S.A. 50-632(c)(2) and any other consumers revealed during the course of discovery;
- F. Defendant pay a civil penalty in the amount of \$10,000.00 for each violation of the Kansas Roofing Registration Act alleged herein, in the aggregate of \$40,000.00;

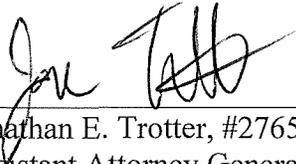
G. Defendant pay a civil penalty in the amount of \$10,000.00 for each violation of the Kansas Consumer Protection Act alleged herein, in the aggregate of \$10,000.00;

H. Defendant pay all court costs and all other costs associated with distributing and executing on any judgment made by this Court.

Respectfully submitted,



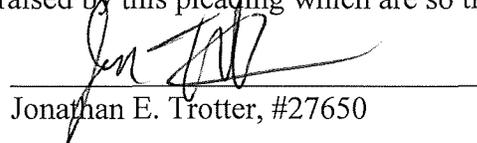
Derek Schmidt, #17781
Kansas Attorney General



Jonathan E. Trotter, #27650
Assistant Attorney General
Office of the Kansas Attorney General
120 S.W. 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury for all issues raised by this pleading which are so triable.



Jonathan E. Trotter, #27650

ELECTRONICALLY FILED
2018 Apr 11 PM 3:38
CLERK OF THE THOMAS COUNTY DISTRICT COURT
CASE NUMBER: 2018-CV-000010



Court: Thomas County District Court
Case Number: 2018-CV-000010
Case Title: State of Kansas ex rel. Derek Schmidt Atty General
vs. Energy Guard Midwest LLC
Type: Temporary Restraining Order

SO ORDERED.

/s/ Honorable Kevin N. Berens, District Court Judge

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Assistant Attorney General
Office of the Kansas Attorney General
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**IN THE DISTRICT COURT OF THOMAS COUNTY, KANSAS
FIFTEENTH JUDICIAL DISTRICT**

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| STATE OF KANSAS, <i>ex rel.</i> |) | |
| DEREK SCHMIDT, Attorney General, |) | |
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| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 2018-CV-10 |
| |) | |
| ENERGY GUARD MIDWEST, LLC |) | |
| |) | |
| Defendant. |) | |
| |) | |

(Pursuant to K.S.A. Chapter 60)

TEMPORARY RESTRAINING ORDER

NOW on this date, Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Kansas Attorney General, by and through counsel, Jonathan E. Trotter, Assistant Attorney General, and Defendant, by and through counsel Robert J. Moody, respectfully submit this agreed upon Temporary Restraining Order pursuant to K.S.A. 50-632.

The Court hereby finds the following:

1. The above-captioned matter was commenced by the State of Kansas, *ex rel.* Derek Schmidt, Kansas Attorney General against Defendant Energy Guard Midwest, LLC (“Defendant”).
2. Plaintiff filed its *Ex Parte* Motion for Temporary Restraining Order along with Plaintiff’s Petition on March 16, 2018.

3. The Court denied Plaintiff's *Ex Parte* Motion for Temporary Restraining Order on March 19, 2018.

4. Plaintiff filed a Motion for Temporary Restraining Order on March 19, 2018.

5. Plaintiff filed a Notice of Hearing on the Motion for Temporary Restraining Order on March 21, 2018.

6. A hearing on Plaintiff's Motion for Temporary Restraining Order was set for a telephone hearing on Thursday, April 12, 2018 at 9:00 a.m. in Thomas County District Court, 300 N Court Ave., Colby, Kansas 67701.

7. Defendant is a Kansas Limited Liability Company, with a principal place of business at 2124 North Garland Street, Wichita, Kansas 67203.

8. Defendant is engaged in the solicitation and sale of roofing services to Kansas consumers.

9. Defendant is a roofing contractor within the definition of K.S.A. 50-6,122(a)(1).

10. Defendant is a supplier within the definition of K.S.A. 50-624(l).

11. Defendant has made or caused to be made consumer transactions within the definition of K.S.A. 50-624(c).

12. Plaintiff alleges that Defendant is engaging in acts and practices in violation of the Kansas Roofing Registration Act, K.S.A. 50-6,121 *et seq.*

13. Additionally, Plaintiff alleges that Defendant is engaging in a number of deceptive and unconscionable acts and practices in violation of the Kansas Consumer Protection Act ("KCPA"), K.S.A. 50-623 *et seq.*

14. Additionally, Plaintiff alleges Defendant has entered into consumer transactions from which the consumer was unable to receive a material benefit of the subject of the transaction, in violation of K.S.A. 50-627(b)(3).

15. That defendant specifically denies that it has or is engaged in acts and practices in violation of the Kansas Roofing Registration Act, K.S.A. 50-6,121 *et. seq.*

16. That defendant specifically denies all allegations related to deceptive and unconscionable acts and practices in violation of the Kansas Consumer Protection Act (“KCPA”), K.S.A. 50-623 *et. seq.*

17. That defendant specifically denies all allegations that it has entered into consumer transactions from which the consumer was unable to receive a material benefit of the subject of the transaction, in violation of K.S.A. 50-627(b)(3).

18. In light of the aforementioned alleged violations of the Kansas Roofing Registration Act and the Kansas Consumer Protection Act and denial of the allegations by defendant, the parties have agreed to enter into a Temporary Restraining Order..

19. This Court has authority pursuant to K.S.A. 50-632 to issue the Temporary Restraining Order requested by Plaintiff.

IT IS ORDERED, ADJUDGED AND DECREED that Defendant, and Defendant’s officers, agents, employees, and any persons acting in concert or participation with the Defendant are temporarily enjoined from:

A. Advertising, soliciting, accepting payment for business not currently under contract, contracting, or in any manner conducting any business not currently under contract related to the sale of Defendant’s property or services, as those terms are defined in K.S.A. 50-624, within the state of Kansas. Specifically, Plaintiff requests the Court enjoin Defendant from

engaging in any consumer transactions not currently under contract, as that term is defined in K.S.A. 50-624(c), from the date of the filing of this Temporary Restraining Order until further Order of the Court.

B. Acting as a roofing contractor in the state of Kansas, as that term is defined in K.S.A. 50-6, 122(a)(1); specifically, engaging in the business of commercial or residential roofing services for a fee or offering to engage in or soliciting roofing-related services, including construction, installation, renovation, repair, maintenance, alteration and waterproofing, except for jobs that are currently under contract, until further order of the Court.

C. Acting as a general contractor in the state of Kansas, as that term is defined in K.S.A. 12-1540(d); specifically, acting as any person having the necessary technical knowledge to properly plan and supervise the unlimited erection, remodel or addition to any building or structure, except for jobs that are currently under contract.

D. Destroying any logs, registers, memorandum, record or any other document, including any such document stored in electronic format, related to the Defendant's solicitation of, or transactions with, Kansas consumers.

E. Engaging in any corporate or non-corporate reorganization, reconstruction, dissolution, bankruptcy or any other business entity restructuring or reforming without prior, written notice to this Court and Plaintiff.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court authorizes agents and attorneys of the Office of the Kansas Attorney General to monitor the Defendant's completion of roofing and construction services that is currently under contract.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court authorizes agents and attorneys of the Office of the Kansas Attorney General to obtain a list identifying

outstanding roofing and construction services in Kansas by April 20, 2018, a final projected completion date, and all payments received on all projects that are currently under contract on the file-stamped date on this Order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court authorizes agents and attorneys of the Office of the Kansas Attorney General to obtain a Completion Certificate upon the completion of each outstanding roofing and construction service in Kansas that are currently under contract on the file-stamped date on this Order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court authorizes agents and attorneys of the Office of the Kansas Attorney General to monitor Defendant's compliance with this Order pending further order of this Court or final resolution of this matter.

IT IS SO ORDERED.

THIS ORDER IS EFFECTIVE AS OF THE DATE AND TIME OF ITS ELECTRONIC FILING.

Submitted by:

Approved by:

/s/ Jonathan E. Trotter

/s/ Robert J. Moody

Jonathan E. Trotter, #27650
Assistant Attorney General
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Topeka, Kansas 66612-1597
Tel: (785) 296-3751
Fax: (785) 291-3699
jon.trotter@ag.ks.gov
Attorney for Plaintiff

Robert J. Moody, #26398
Martin, Pringle, Oliver, Wallace & Bauer,
L.L.P
100 North Broadway, Suite 500
Wichita, Kansas 67202
Attorney for Defendant