

Respondents violated the above-listed consumer protection laws by taking thousands of dollars from consumers for custom homes that Respondents never completed. Respondents failed to secure deposits and advance payments they collected from consumers, hold money in trust for the benefit of consumers, pay subcontractors, or refund the advance payments consumers were entitled to have returned. Respondents engaged in unfair or deceptive trade practices in the course of selling, offering, and providing new homes, including custom homes, to consumers in Maryland, in violation of the Maryland Consumer Protection Act. For these reasons, the Division is entitled to a cease-and-desist order, and the payment of monetary relief from Respondents including restitution, economic damages for consumers, and civil penalties and costs.

Parties

1. Proponent in this proceeding is the Consumer Protection Division (the “Division”) of the Office of the Attorney General. This proceeding is brought by Proponent to redress past and prevent future violations by Respondents of the New Home Deposits Act (“NHDA”), Md. Code Ann., Real Prop. §§ 10-301 through 10-306, the Custom Home Protection Act (“CHPA”), Md. Code Ann., Real Prop. §§ 10-501 through 10-509, the Home Builder Registration Act (“HBRA”), Md. Code Ann., Bus. Reg. §§ 4.5-101 through 801, and the Maryland Consumer Protection Act (“CPA”), Md. Code Ann., Com. Law §§ 13-101 through 13-501.

2. Respondent Korey Homes Building Group, LLC (“Korey Homes”), is a Maryland corporation with its primary place of business in Baltimore County, Maryland. Korey Homes registered with the Maryland State Department of Assessments and Taxation (“SDAT”) on October 27, 2010, naming Korey W. Smith as resident agent. The business’ charter was forfeited on October 16, 2020.

3. Korey Homes Building Group, LLC first registered “Korey Homes” as a trade name with SDAT on December 7, 2010, and renewed its registration in 2015. Registration of the trade name expired December 2020.

4. Respondent Korey Homes is a “home builder” and “custom home builder” that, since at least October 2010, undertook to erect or otherwise construct “new homes” and “custom homes” as defined in § 4.5-101 of the HBRA and § 10-501 of the CHPA. Korey Homes was initially registered with the Home Builder Registration Unit (“Unit”) of the Division with Maryland Home Builder Registration (MHBR) No. 6667 in December 2010, and renewed its registration several times, until it expired on March 1, 2019.

5. Respondent Korey Wayne Smith (“Korey Smith”) was a Maryland resident until relocating to South Carolina in or around February 2019. At all times pertinent hereto, Korey Smith was an owner/member, President, and principal of Korey Homes and was responsible for the company’s home building operations in the State of Maryland. Korey Smith possessed the authority to control the policies and trade practices of Korey Homes; participated in the alleged unfair or deceptive trade practices that are described herein; directed or supervised those employees who participated in the alleged unfair or deceptive trade practices that are described herein; and had the power to stop the alleged unfair or deceptive trade practices, but rather than stopping them, promoted their use. Korey Smith is liable for the unfair and deceptive trade practices committed by Korey Homes because Korey Smith personally participated in the acts alleged herein or knew or should have known of the acts alleged herein and had the authority to control the acts alleged herein.

6. Respondent Kenneth W. Smith (“Kenneth Smith”) is a Maryland resident who lives in Bel Air, Maryland. At all times pertinent hereto, Kenneth Smith was effectively an owner, member, principal, or partner of Korey Homes with his son, Korey Smith, and, until at least the end of 2017, was responsible for the company’s home building operations in the State of Maryland. Until at least the end of 2017, Kenneth Smith possessed the authority to control the policies and trade practices of Korey Homes; participated in the alleged unfair or deceptive trade practices that are described herein; directed or supervised those employees who participated in the alleged unfair or deceptive trade practices that are described herein; and, at all relevant times, had the power to stop the alleged unfair or deceptive trade practices, but rather than stopping them, promoted their use. Kenneth Smith is liable for the unfair and deceptive trade practices committed by Korey Homes because Kenneth Smith personally participated in the acts alleged herein, knew or should have known of the acts alleged herein and had the authority to control the acts alleged herein.

7. Kenneth Smith was the owner and principal of other home construction companies doing business in Maryland, including Korey Homes, LLC, which was registered with SDAT from January 2003 until its forfeiture on October 3, 2014; and registered with the Unit until September 2012. Korey Homes, LLC often identified itself as “Korey Homes”, but unlike Korey Homes Building Group, LLC, never registered “Korey Homes” as a trade name.¹

Statement of Facts

8. Respondent Korey Homes is a “home builder” and “custom home builder” that, since at least October 27, 2010, undertook to erect or otherwise construct “new homes” and “custom homes” as defined in § 4.5-101 of the HBRA and § 10-501 of the CHPA.

¹ References to “Korey Homes” in this Statement of Charges are limited to Respondent Korey Homes Building Group, LLC.

9. Respondents applied to the Unit to register Korey Homes as a home builder. In submitting the application, Respondents failed to notify the Division that Respondent Kenneth Smith was an owner, member, principal, or partner of Korey Homes with his son, Respondent Korey Smith.

10. Section 4.5-303(a)(1) of the HBRA requires Maryland home builders to register with the Division by submitting applications to the Unit “on the form provided by the Unit.” The form provided by the Unit and § 4.5-303 of the HBRA require a home builder to disclose: (i) the names and addresses of all principals of the applicant; (ii) the names of all applicants and principals who have previously applied for registration, and the disposition of all previous applications; (iii) the name of any applicant or principal that was a principal in an entity that previously applied for registration; and, (iv) legal proceedings that are pending against or filed by the applicant or principals, including judgments, criminal proceedings, bankruptcies, and liens. Section 4.5-306(a) of the HBRA and the forms signed by the builder further require home builders to notify the Unit of changes in the information contained in their registration materials within ten (10) working days of the effective date of the change.

11. Respondent Korey Smith signed, under oath, the application to register Korey Homes as President and owner. Respondents failed to disclose in the application to register: (i) the names and addresses of all principals of the applicant; (ii) the names of all applicants and principals who had previously applied for registration, and the disposition of all previous applications; and (iii) the name of any applicant or principal that was a principal in an entity that previously applied for registration. Further, Respondents failed to notify the Unit of changes in the information contained in their registration materials within ten (10) working days of the effective date of the change.

12. Without the benefit of the required information, the Unit issued MHBR No. 6667 to Respondent Korey Homes and renewed it several times before it expired on March 1, 2019.

13. Respondent Korey Homes entered into contracts with consumers to build new homes, including custom homes, in the State of Maryland, each of which were signed by Respondent Korey Smith.

14. Respondents collected advance payments, including deposits and other consideration, from consumers, or from their construction loans that banks paid on consumers' behalf, in connection with contracts to construct the new homes.

15. Respondents deposited the advance payments in accounts controlled by Respondents. Respondent Korey Smith was a signatory on the bank accounts. One of the accounts was not an escrow account as required by Maryland law and was, in fact, a general operating account.

16. Respondent Kenneth Smith was responsible for the company's financial operations in the State of Maryland until at least the end of 2017 and was responsible for deciding which subcontractors, suppliers, and materialmen were paid and when.

17. Respondents failed to either place or maintain deposits and other advance payments paid by, or on behalf of, consumers in an escrow account, or obtain a surety bond or an irrevocable letter of credit to protect the deposits and other payments.

18. Respondents failed to hold the money they received from consumers in trust for the benefit of the consumer.

19. Respondents received substantial progress payments from consumers or from construction loan banks on consumers' behalf. Respondents failed to use the progress payments to pay subcontractors, suppliers, and materialmen within a reasonable period after receipt of payment from or on behalf of consumers.

20. Some consumers who purchased custom homes received lien notices from subcontractors seeking payment for work that had been completed and for which consumers had directly or indirectly paid Respondent Korey Homes.

21. At least five actions to establish and enforce mechanics' liens were filed against consumers for work performed or materials supplied for a custom home being constructed pursuant to a contract between Respondent Korey Homes and a consumer.

22. Respondents used money paid by consumers for their custom home projects to pay for expenses not related to, or in connection with, the consumers' custom home contracts; and Respondents Korey Smith and Kenneth Smith took, directly or indirectly, money paid by consumers for their custom home projects to pay for expenses not related to, or in connection with, the consumers' custom home contracts.

23. Respondents Korey Smith and Kenneth Smith could have stopped taking, directly or indirectly, money paid by consumers for their custom home projects to pay for expenses not related to, or in connection with, the consumers' custom home contracts, but failed to stop misappropriating consumers' money.

24. Respondents represented to consumers, expressly or impliedly, that they would hold consumers' payments in trust for the benefit of the consumers when in fact they instead misappropriated consumers' payments.

25. Respondents represented to consumers, expressly or impliedly, that Respondents were in compliance with Maryland law, including the CHPA, NHDA, HBRA, and CPA, when, in fact, they were not in compliance with these laws.

26. Respondents failed to complete some homes and, after stopping work or failing to begin construction, did not complete the promised work or refund payments made by consumers for the construction of their homes, despite consumers' demands to complete the work or return the money.

27. Respondents failed to deliver to consumers within 30 days after each progress payment a list of subcontractors, suppliers, and materialmen who provided more than \$500 of goods or services and indicate which of those had been paid by Korey Homes.

28. Respondents failed to provide consumers with waivers of liens from applicable subcontractors, suppliers, or materialmen within a reasonable time after the final payment for the goods or services they provided.

29. Respondents failed to inform consumers that their money would not be held in trust for the benefit of the consumer.

30. Respondents failed to inform consumers that Respondents would misappropriate money paid by consumers to Korey Homes.

31. Respondents failed to inform consumers that, prior to the work being done to construct their home, some, if not all, of their deposits and advance payments would be placed in an account that was being used to give money to Respondent Kenneth Smith and a non-profit known as RAACE, and to pay the salary of at least one employee of RAACE.

32. Respondents failed to inform consumers that they would not be provided within 30 days after each progress payment a list of subcontractors, suppliers, and materialmen who provided more than \$500 of goods or services and indicate which of those had been paid by Korey Homes.

33. Respondents failed to inform consumers that they would not pay all applicable subcontractors, suppliers, or materialmen within a reasonable time after Respondents received final payment for the goods or services provided.

34. Respondents failed to inform consumers that, when draws were paid to Korey Homes for work performed by subcontractors, suppliers, or materialmen, the money received would not be used to pay those subcontractors, suppliers, or materialmen for that work.

35. Respondents failed to inform consumers that they would not be provided with waivers of liens from applicable subcontractors, suppliers, or materialmen within a reasonable time after Respondents received final payment for the goods or services provided.

36. Respondents' misrepresentations had the capacity to mislead consumers and, in fact, did mislead consumers.

37. Respondents failed to disclose facts to consumers that were material to consumers and their omission deceived or tended to deceive consumers.

38. Respondents have now closed Korey Homes and have no intention to provide consumers with the new homes they represented they would provide them.

39. Respondents collected tens of thousands of dollars in deposits from consumers for work they never performed or never completed.

40. Respondents' illegal home building practices set forth above, including taking substantial payments from consumers that they failed to hold in trust, and instead, misappropriated for their own uses, caused substantial injury to consumers. Consumers could not reasonably avoid the injuries caused by the Respondents in that they did not know the Respondents were acting illegally and would wrongfully convert their payments. Respondents' illegal practices did not provide any benefit to consumers or competition.

Violations of the Home Builder Registration Act

41. The Division incorporates paragraphs 1 through 40 as if fully set forth herein.

42. Respondents fraudulently or deceptively obtained and attempted to obtain a registration in violation of HBRA §§ 4.5-303 and 4.5-308(a)(1) by failing to disclose to the Unit: (i) the names and addresses of all principals of the applicant; (ii) the names of all applicants and principals who have previously applied for registration, and the disposition of all previous applications; and (iii) the name of any applicant or principal that was a principal in an entity that previously applied for registration. Further, Respondents failed to notify the Unit of changes in the information contained in their registration materials within ten (10) working days of the effective date of the change in violation of HBRA § 4.5-306(a) and the forms signed by the Respondents.

Violations of the New Home Deposits Act

43. The Division incorporates paragraphs 1 through 42 as if fully set forth herein.

44. Respondents failed to place or maintain deposits and other payments made by consumers in an escrow account and failed to obtain a surety bond or an irrevocable letter of credit to protect the deposits and other payments, in violation of NHDA § 10-301.

45. Respondents breached the trust created for the benefit of the buyer by NHDA § 10-301.1(a) by failing to pay subcontractors within a reasonable period after receipt of payment from consumers, and by misappropriating the money paid by consumers to Korey Homes.

46. Each violation of the NHDA stated above is also an unfair or deceptive trade practice prohibited by the CPA, pursuant to NHDA §10-305(b).

Violations of the Custom Home Protection Act

47. The Division incorporates paragraphs 1 through 46 as if fully set forth herein.

48. Respondents entered into “custom home contracts” with consumers for the construction of “custom home[s]” as defined in CHPA § 10-501.

49. Respondents breached the trust created for the benefit of the buyer by CHPA §§ 10-502 and 10-503 by failing to pay subcontractors, suppliers, and materialmen within a reasonable period after receipt of payment from consumers, and by misappropriating the money paid by consumers to Korey Homes.

50. The above stated violations of the CHPA also constitute unfair or deceptive trade practices prohibited by the CPA, pursuant to CHPA § 10-507(a).

Violations of the Consumer Protection Act

51. The Division incorporates paragraphs 1 through 50 as if fully set forth herein.

52. The new home building services the Respondents offered and sold consumers are consumer goods and services pursuant to §13-101(d)(1) of the CPA because they are used for personal, family, or household purposes.

53. Respondents are merchants as defined by §13-101(g)(1) of the CPA.

54. Respondents engaged in unfair, abusive or deceptive trade practices in connection with the offer or sale of consumer goods and services that are generally prohibited by §13-303(1) and (3) of the CPA.

Deceptive Trade Practices

55. Respondents made false and misleading statements that had the capacity, tendency, or effect of deceiving or misleading consumers, and are deceptive trade practices prohibited by § 13-303 of the CPA, as defined in § 13-301(1) of the CPA, when they: (a) misled consumers concerning their ability to complete the construction of the custom homes in a workmanlike and timely manner; (b) misled consumers concerning their ability to protect their payments; and (c) misled consumers concerning their compliance with Maryland law.

56. Respondents failed to state material facts, the omission of which deceived or tended to deceive consumers, and are deceptive trade practices prohibited by § 13-303 of the CPA, as defined in § 13-301(3) of the CPA, when they failed to inform consumers that Respondents: (a) would misappropriate consumer money paid to Korey Homes; (b) would not complete the construction of their homes; (c) would not protect their payments and deposits in an escrow account or with a surety bond or an irrevocable letter of credit; (d) would not hold their payments and deposits in trust; (e) would not timely pay subcontractors and suppliers; (f) would not provide an appropriate list of subcontractors after each progress payment; and (g) would not provide waivers of liens.

Unfair Trade Practices

57. In their offer and sale of new home goods and services to consumers, the Respondents engaged in unfair trade practices.

58. Respondents' illegal new home building practices have caused substantial injury to consumers.

59. Consumers who purchased Respondents' goods and services could not have known that Respondents were violating Maryland law or that they would not provide purchased new home building goods and services, would misappropriate consumer money, and would not return deposits and advance payments, and therefore could not reasonably avoid their injuries.

60. The injuries that consumers have suffered because of Respondents' acts and omissions are not offset by any benefit to consumers or to competition and are unfair trade practices that violate § 13-303 of CPA.

Relief

By violating the HBRA, NHDA, CHPA, and CPA, Respondents are subject to a cease-and-desist order and are liable for restitution and economic damages to consumers, civil penalties, and costs pursuant to the CPA §§ 13-403, 13-409, and 13-410.

WHEREFORE, the Proponent requests that:

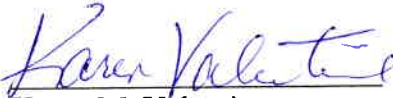
- A. A cease-and-desist order be issued pursuant to CPA § 13-403 to prohibit Respondents from violating the CPA, CHPA, NHDA and HBRA.
- B. An order be issued pursuant to CPA § 13-403 finding that Respondents are liable for restitution and economic damages to consumers, civil penalties, and the payment of costs pursuant to CPA §§ 13-403, 13-409 and 13-410.
- C. Respondents be ordered to pay restitution and economic damages pursuant to CPA § 13-403(b).
- D. Respondents be ordered to pay civil penalties pursuant to CPA § 13-410.

- E. Respondents Korey Homes and Kenneth Smith be ordered to pay costs pursuant to CPA § 13-409.
- F. Such other and further relief be granted as is appropriate and necessary.

Respectfully submitted,



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