

SEP 29 2022

ADMINISTRATIVE HEARING PROCESS

CONSUMER PROTECTION DIVISION,  
OFFICE OF THE ATTORNEY GENERAL  
STATE OF MARYLAND,

Proponent,

v.

PATRICK MICHAEL SAVAGE d/b/a  
Extreme Backyard's,

Respondent.

IN THE  
CONSUMER PROTECTION

DIVISION

OFFICE OF THE

ATTORNEY GENERAL

CPD Case No.: 22-001-349559

OAH Case No.: OAG-CPD-04-22-06374

\* \* \* \* \*

**FINAL ORDER**

1. The Consumer Protection Division of the Office of the Attorney General (the “Agency”)<sup>1</sup> hereby orders Patrick Michael Savage d/b/a Extreme Backyard’s (“Respondent”) to cease and desist from violating the Consumer Protection Act and to take affirmative action pursuant to § 13-403(b)(1) of the Consumer Protection Act as described herein.

**Findings of Fact and Conclusions of Law**

2. The Agency hereby adopts and incorporates the Findings of Fact and Conclusions of Law made by Administrative Law Judge Brian Weeks (the “ALJ”) in his Proposed Ruling on Motion for Summary Decision attached hereto, as if they were fully set forth herein, as modified below:<sup>2</sup>

<sup>1</sup> The Consumer Protection Division acting in its capacity as a quasi-judicial agency is referred to herein as the “Agency,” while the Consumer Protection Division acting as the Proponent in the instant matter is referred to as “Proponent.”

<sup>2</sup> The Proponent also requested a modification to dates included in the ALJ’s Statement of the Case, however, as the Final Order incorporates only the Proposed Findings of Fact and Conclusions of Law, the Agency finds the requested modification unnecessary.

The ALJ impliedly found that Respondent collected deposits in excess of 1/3 of the Home Improvement contract price against Maryland law by finding that, “[m]ultiple consumers entered contracts with and paid excessive deposits to the Respondent even though he was not legally authorized to provide home improvement services,” along with the ALJ’s factual findings of each consumer’s initial deposit.

### **Application**

3. The provisions of this Final Order shall apply to Patrick Michael Savage and all aliases and trade names under which he does or may do business, including without limitation Extreme Backyard’s, and to his agents, employees and assigns, and any partnership, corporation, or entity in which he either currently, or in the future, has an ownership interest, has authority to control, or has the authority to establish policy.

### **Definitions**

4. The term “Home Improvement” means: (i) the addition to or alteration, conversion, improvement, modernization, remodeling, repair, or replacement of a building or part of a building that is used or designed to be used as a residence or dwelling place or a structure adjacent to that building; or (ii) an improvement to land adjacent to the building. Md. Code Bus. Reg. § 8-101(g)(1).

5. The term “Home Improvement” includes: (i) construction, improvement, or replacement, on land adjacent to the building, of a driveway, fall-out shelter, fence, garage, landscaping, deck, pier, porch, or swimming pool; (ii) a shore erosion control project, as defined under § 8-1001 of the Natural Resources Article of the Maryland Annotated Code, for a residential property; (iii) connection, installation, or replacement, in the building or structure, of a dishwasher,

disposal, or refrigerator with an icemaker to existing exposed household plumbing lines; (iv) installation, in the building or structure, of an awning, fire alarm, or storm window; and (v) work done on individual condominium units. Md. Code Bus. Reg. § 8-101(g)(2).

### **Cease and Desist Provisions**

6. Respondent shall immediately cease and desist from engaging in any unfair or deceptive trade practices in violation of the Maryland Consumer Protection Act in connection with the offer, sale or performance of Home Improvement goods and services.

7. Respondent shall not make any misrepresentation that has the capacity, tendency or effect of misleading any consumer in connection with the offer, sale or performance of Home Improvement goods and services.

8. Respondent shall not fail to state any material fact, the omission of which would deceive or tend to deceive a consumer, in connection with the offer, sale or performance of Home Improvement goods and services.

9. Respondent shall not misrepresent that Respondent has a sponsorship, approval, status, affiliation, or connection that Respondent does not have in connection with the offer, sale or performance of Home Improvement goods and services.

10. Respondent shall not hold himself out as a Home Improvement contractor or perform Home Improvement services in Maryland unless Respondent possesses the license required by Md. Code Bus. Reg. § 8-301(a).

11. Respondent shall not offer or sell Home Improvement goods and services in Maryland unless Respondent possesses the license required by Md. Code Bus. Reg. § 8-301.

12. In the event that a license or registration Respondent is required to hold pursuant to paragraphs 10 and 11 of this Final Order expires, is revoked or suspended, or otherwise becomes

invalid at any point after Respondent has offered a consumer Home Improvement goods and services, but before such services have been fully performed, Respondent shall:

- a. notify each such consumer to whom Respondent has offered, sold, or for whom Respondent is performing such services of the lapse in licensure or registration;
- b. allow consumers to cancel any contract for the provision of the services without penalty or payment; and
- c. regardless of the consumer's election pursuant to subparagraph (b), not perform or collect any payment for such services until such time as Respondent obtains all valid and necessary licenses or registrations.

13. Respondent shall not offer or sell any consumer goods or services to consumers unless Respondent is able to provide such goods and services.

14. a. In addition to the requirements prescribed by this Final Order, Respondent shall not offer, sell, or provide Home Improvement goods and services in Maryland without complying with all requirements of the Maryland Home Improvement Law, Md. Code Bus. Reg. §§ 8-101 through 8-802 ("MHIL").

b. If, subsequent to the entry of this Final Order, the MHIL is amended such that a provision of the law makes compliance with a term of this Final Order impossible, Respondent shall comply with the applicable provision of the MHIL, and shall immediately notify Proponent of the provision of law Respondent believes conflicts with this Final Order, and the changes Respondent proposes to comply with the law, provided however, that nothing in this paragraph prohibits Proponent from taking any action to enforce the terms of the Final Order if it disagrees with Respondent's interpretation of the law.

15. Respondent shall not collect, attempt to collect, request, or demand a deposit or other advance payment for Home Improvement goods and services that exceeds one-third of the total contract price for the Home Improvement goods and services.

16. Respondent shall maintain all deposits or other advance payments collected from a consumer in connection with the offer or sale of consumer goods or services in trust for the benefit of the consumer. Respondent shall not use any such advance payment or deposit for any purpose besides:

- a. returning all or a portion of the sum to the buyer;
- b. paying documented claims of persons who have furnished labor or materials in connection with the services purchased by the consumer;
- c. paying for documented purchases of materials necessary to provide the goods or services promised to the consumer; or
- d. final payment after all promised goods and services have been provided to the consumer.

Respondent shall maintain documentation of all deposits or other advance payments made by consumers, and shall, upon request, promptly provide the documentation to the consumer or to Proponent.

17. Respondent shall not expressly or impliedly misrepresent Respondent's willingness or ability to provide refunds to consumers and shall pay all refunds due or promised to consumers within two (2) business days of the earlier of: (i) the date of receiving a refund request; (ii) the date a refund becomes due pursuant to the terms of a contract; or (iii) the date Respondent agreed to provide a refund.

18. For at least ten (10) years from the date of this Final Order, Respondent shall maintain records concerning all Home Improvement goods and services that Respondent provides, and all payments Respondent accepts for Home Improvement goods and services. Respondent shall produce to Proponent upon request the documents that must be maintained pursuant to this paragraph.

19. Respondent shall not demand, collect, or attempt to collect any payment from consumers in Maryland to whom, prior to the date of this Final Order, Respondent offered, sold, or provided any Home Improvement goods and services for which Respondent did not possess a valid license when the Home Improvement good or service was sold.

20. Respondent shall notify each consumer in Maryland to whom, prior to the date of this Final Order, Respondent offered, sold, or provided any Home Improvement good or service for which Respondent did not possess a valid license that:

- a. Respondent is prohibited from completing the promised work;
- b. any contracts entered into by Respondent are null and void;
- c. Respondent will not collect or attempt to collect any payment from the consumer for the work offered, sold, or performed to date; and
- d. the consumer should arrange for a licensed individual or company to complete the work.

21. Respondent shall not take any payments, deposits, or other consideration from consumers in advance of providing an offered good or service unless Respondent first provides the Agency with a surety bond (the "Bond") in a form acceptable to the Agency in the amount of One Hundred Thousand Dollars (\$100,000.00), and that meets the following conditions:

- a. The Bond shall be issued by a surety licensed to do business in Maryland (the “Surety”) and shall provide that the Respondent and the Surety are held and firmly bound to consumers who suffer any damage or loss in connection with Respondent’s failure to provide any purchased good or service.
- b. The Bond shall permit any consumer who suffers any damage or loss in connection with Respondent’s failure to provide any purchased good or service to file a claim for the consumer’s damage or loss with the Surety and, if the claim is not paid, to bring an action based on the Bond in a court of competent jurisdiction and to recover against the Surety any damage or loss suffered by the consumer in connection with Respondent’s failure to provide any purchased good or service, as well as the costs of the legal action.
- c. The Bond shall also permit the Proponent to file a claim with the Surety for any damage or loss suffered by a consumer in connection with Respondent’s failure to provide any purchased good or service and, if the claim is not paid, to bring an action based on the Bond in a court of competent jurisdiction and to recover against the Surety any damage or loss suffered by a consumer in connection with Respondent’s failure to provide any purchased good or service, as well as the costs of the legal action.
- d. The Bond shall also permit the Proponent to file a claim with the Surety for costs and expenses it incurs in connection with its enforcement of this Final Order and, if the claim is not paid, to bring an action based on the Bond in a court of competent jurisdiction for the costs and expenses incurred by the Proponent in connection with its enforcement of this Final Order.
- e. The Bond posted by Respondent pursuant to this paragraph shall remain in effect until five (5) years from the date the last claim is made, or if no claims are made, five (5)

years from the date it is first posted.

f. Respondent shall provide the Agency with a copy of the Bond and shall maintain accurate records of all premium payments made on it and claims and payments made from it. Commencing ninety (90) days from the date of the entry of this Final Order and annually thereafter for the duration of the Bond, Respondent shall provide the Proponent with copies of all such records they maintain concerning the Bond.

g. If a claim is filed with a Surety by the Proponent, notice shall be given by mailing a copy of the claim to Respondent. Any notice to Respondent that is made under this or any other subparagraph shall be made by mailing such notice, first class mail, postage prepaid, to Patrick Michael Savage, 1 Comanche Court, Middle River, Maryland 21220, or to such other address as Respondent may designate by written notice to the Proponent.

22. Respondent shall include in any contract or other agreement he enters into with a consumer for any good or service the following information:

a. a notice informing the consumer of the name, address and telephone number of the surety that provides the Bond required under paragraph 21 and informing the consumer of their ability to file a claim with the surety if they suffer any damage or loss in connection with Respondent's failure to provide any purchased any good or service; and

b. a notice informing the consumer that if they have any complaint concerning Respondent's failure to provide any purchased good or service, they may contact the Consumer Protection Division at 200 St. Paul Place, 16<sup>th</sup> Floor, Baltimore, MD 21202; (410) 576-6300 or toll-free: (888) 743-0023.



### Restitution

23. Consumers were harmed due to Respondent's unfair and deceptive trade practices in connection with Respondent's unlicensed offer, sale, and performance of Home Improvement goods and services. Proponent shall distribute restitution under this Final Order to consumers if they paid Respondent any amount for Home Improvement goods or services prior to the date of this Final Order and have not already been fully refunded by Respondent.

24. Within thirty (30) days of the date of this Final Order, Respondent shall pay restitution to the Proponent equal to the sum of all monies Respondent collected from consumers for Home Improvement goods and services prior to the date of this Final Order, less any amounts Respondent can demonstrate have already been refunded (the "Restitution Amount"). The Restitution that Respondent shall pay pursuant to this paragraph shall be at least (\$83,588.69), which shall be distributed as follows:

<u>Consumer</u>	<u>Amount</u>
a. John Frey	\$5,295.00;
b. Geoffrey Hill	\$10,200.00;
c. James Hiltz	\$2,500.00;
d. James Hindle	\$7,199.00;
e. Russell Holt	\$8,089.00;
f. Donald Price	\$745.00;
g. Tina Benzing	\$743.00;
h. Steve Copinger	\$4,285.00;
i. Barbara Davis	\$1,577.00;
j. Muhammad Ghanizadeh	\$6,644.95;

k. Jennifer Green	\$5,242.50;
l. Alex Hvesukovich	\$4,500.00;
m. Emily Herzing	\$6,711.25;
n. Gina Dolezar	\$12,346.99;
o. Carl Starr	\$7,510.00.

In addition to the \$83,588.69 in restitution that shall be distributed as set forth above, the Respondent shall provide the Proponent with payments for every other consumer who is entitled to restitution pursuant to paragraph 23.

25. Within thirty (30) days after the date of this Final Order, Respondent shall provide Proponent with a list in the form of a spreadsheet of all consumers from whom Respondent has collected any amount for Home Improvement goods and services (the "Consumer List"). For each consumer, Respondent shall provide the following information, with each item in a separate field:

- (a) the consumer's first name;
- (b) the consumer's last name;
- (c) the consumer's last known address;
- (d) the consumer's last known city, state, and postal code;
- (e) the consumer's last known telephone number;
- (f) the consumer's last known email address;
- (g) the amount the consumer paid Respondent for Home Improvement goods and services; and
- (h) the amount of any refund(s) provided to the consumer by Respondent.

Respondent shall provide the Consumer List required under this paragraph in both electronic and paper formats.

26. Restitution payments received from the Respondent shall be maintained by the Agency in a bank account to pay restitution to consumers and to pay the costs of a claims process (the "Restitution Account"). Proponent shall make disbursements from the Restitution Account to pay restitution to eligible consumers and to pay the costs of the claims process.

27. Proponent shall perform a claims process that will be conducted by a person or persons appointed by the Agency (hereinafter the "Claims Administrator"). The Claims Administrator may be an employee of the Agency or an independent claims processor.

28. The claims process shall consist of identifying and locating each consumer who is eligible to receive restitution pursuant to this Final Order, gathering all information necessary to determine the amounts of restitution due to each consumer who is eligible to receive restitution, and the Claims Administrator mailing restitution payments to all such eligible consumers and any other mailings necessary to the claims process.

29. In addition to the consumers entitled to restitution identified in paragraph 24, if it is possible to determine a consumer's entitlement to relief from sources other than the consumer, that relief shall be provided to the consumer without the necessity of the consumer submitting information in the claims process.

30. The Claims Administrator shall perform the tasks necessary to ensure a thorough and efficient determination of consumers' claims pursuant to the terms of this Final Order.

31. The Claims Administrator shall perform the above duties under the supervision and control of the Proponent.

32. Respondent shall give the Claims Administrator complete access to all records, data, and personnel necessary for the Claims Administrator to complete his or her duties.

33. Respondent shall be liable for the costs of conducting the claims process. Claims Administrator shall notify the parties of all costs incurred in connection with the claims process.

34. If, at any stage of the claims process, it is determined that the Restitution Account will require additional payments to satisfy all consumer restitution due under this Final Order or to pay the costs of the claims process, Respondent shall deposit additional money in the Restitution

Account in the amount specified by Proponent within thirty (30) days of being notified by Proponent of the additional amount.

35. If there are insufficient funds collected to provide full restitution to each victim, benefits shall be distributed to consumers on a *pro rata* basis.

### Civil Penalties

36. The factors to be considered by the Agency pursuant to Md. Code Ann., Com. Law § 13-410 in setting the amount of a civil penalty are:

- (i) The severity of the violation for which the penalty is assessed;
- (ii) The good faith of the violator;
- (iii) Any history of prior violations;
- (iv) Whether the amount of the penalty will achieve the desired deterrent purpose; and
- (v) Whether the issuance of a cease and desist order, including restitution, is insufficient for the protection of consumers.

Each of these factors, considered below, supports the imposition of a substantial penalty.

37. Respondent's violations were severe. Respondent deceived consumers in each aspect of their transaction and did not complete performance of a single contract, causing substantial financial and other harm to consumers. From the beginning, Respondent deceived consumers by advertising that he had the ability to install above-ground pools and other Home Improvement goods at consumers' homes. Respondent never applied or obtained the required Home Improvement license, making his advertisements as a Home Improvement contractor false and a deceptive foundation for his contracts with consumers. Respondent collected advance deposits well above the amount allowed by Maryland law that were purported to be used for the purchases of an above-ground pool, decks, and other pool accessories. Instead, Respondent wrongfully converted consumers' deposits for his own personal uses. Some consumers were disabled, or had children with illnesses, and purchased a pool from Respondent for therapeutic

purposes, but were denied the benefits of their pools by Respondent. When consumers would ask for updates or explanations for the delay in their projects, Respondent misled them and continued to promise he would provide their pools and related services, which he never did. Ultimately, Respondent would either perform no work or demolish existing above-ground pools and fail to replace them as promised. After consumers realized Respondent would not or could not provide the promised goods or services, Respondent repeatedly promised refunds when consumers demanded them but then didn't deliver the refunds, or he ignored consumers' refund requests altogether. Respondent engaged in this deceptive pattern of conduct for nearly two years.

38. Respondent clearly acted in bad faith and without regard for the law. Respondent knew he lacked the required Home Improvement contractor's license and was neither bonded nor insured but told consumers otherwise. Respondent illegally continued to offer and sell Home Improvement goods or services to consumers that he knew or should have known he could not perform. After taking excessive deposits from consumers, Respondent repeatedly misled consumers about the status or progress of their projects and, in some instances, demanded more money from consumers even though he did not perform any services at all. Respondent also repeatedly promised full refunds to consumers that he never paid. Finally, although faced with both civil and criminal lawsuits concerning his illegal sale of Home Improvement goods and services, Respondent continued his deceptive and unfair trade practices. These and other factors plainly establish that Respondent acted in bad faith. Respondent does not have a history with the Agency or of engaging in the type of conduct with which he is now charged. However, Respondent's failure to produce documents regarding the number of consumers for whom he has provided Home Improvement goods and services has concealed the true extent of his violations and suggests that there may be many additional consumers who have been harmed by

Respondent's practices.

39. From the information the Proponent was able to gather, Respondent offered, sold, and provided Home Improvement goods and services between at least June 11, 2020 and May 21, 2022 — a period spanning at least 710 days and 481 traditional business days. During this timeframe, the Proponent identified fifteen (15) consumers who were unfairly and deceptively sold Home Improvement goods and services by Respondent. Both the true amount of time Respondent has acted as an unlicensed Home Improvement contractor and the true number of consumers affected by his illegal practices of offering and selling Home Improvement goods and services are unknown, mostly because Respondent has provided no information in this action or any other legal process. However, it is likely that the fifteen (15) consumers identified during these proceedings are only a small portion of the actual number of consumers harmed by Respondent's unfair and deceptive trade practices.

40. Injunctive provisions and an order to pay restitution alone are not likely to deter Respondent from continuing the same course of illegal conduct and are insufficient to protect consumers. A significant penalty is necessary to deter Respondent and those similarly situated from engaging in this or a similar type of illegal conduct in the future and to protect consumers. An injunction and a requirement that Respondent pay restitution only puts Respondent in the financial situation in which he would have been had he complied with the law in the first place. A significant penalty is necessary to deter Respondent and those similarly situated from engaging in this or a similar type of illegal conduct in the future and to protect consumers.

41. Section 13-410(a) of the Consumer Protection Act provides that a merchant who engages in a violation of the Act is subject to a fine of not more than \$10,000 for each violation. Respondent committed multiple violations of the Consumer Protection Act in connection with

each of the consumers with whom he contracted and the fifteen (15) consumers listed in this action are likely only a portion of those consumers who were harmed by Respondent's unfair and deceptive trade practices.

42. Following consideration of the evidence presented in this case and the factors set forth in Section 13-410(d) of the Consumer Protection Act, the Agency has determined that Respondent shall, no later than thirty (30) days from the date of this Final Order, pay civil penalties totaling \$75,000, representing a penalty of \$5,000 for each illegal transaction that was expressly identified in this case.

43. If there are insufficient funds received by the Agency to cover full restitution for consumers and the civil penalty, the funds received shall be credited first toward restitution and shall only be credited toward the civil penalty after all restitution claims are satisfied.

#### **Costs**

44. Within thirty (30) days from the date of this Final Order, Respondent shall pay the Agency \$37,640.21 for Proponent's costs incurred investigating and prosecuting this matter.

#### **Resolution of Disputes**

45. The Chief of the Agency or the Chief's designee shall resolve any disputes regarding this Final Order and enter any supplemental orders needed to effectuate its purpose.

#### **Notice to Respondent**

46. Pursuant to Md. Code Ann., Com. Law § 13-403(d), Respondent is hereby notified that if the Agency determines that Respondent has failed to comply with this Final Order within thirty (30) days following service of this Final Order, Proponent may proceed with enforcement of the Final Order pursuant to Title 13 of the Commercial Law Article.

**Appeal Rights**

47. A party aggrieved by this Final Order is entitled to judicial review of the decision as provided by § 10-222 of the State Government Article of the Annotated Code of Maryland. Generally, a petition for judicial review must be filed within thirty (30) days after the date of the order from which relief is sought. The time for filing a petition is regulated by Rule 7-203 of the Maryland Rules and the rules regulating judicial review of administrative agency decisions as set forth in Rules 7-201 to 7-210 of the Maryland Rules.

CONSUMER PROTECTION DIVISION  
OFFICE OF THE ATTORNEY GENERAL

Date: September 29, 2022

By:



Steven M. Sakamoto-Wengel  
Consumer Protection Counsel for  
Regulation, Legislation and Policy and  
Chief's Designee