

CONSUMER PROTECTION DIVISION, OFFICE OF THE ATTORNEY GENERAL, PROONENT v. PATRICK MICHAEL SAVAGE, D/B/A EXTREME BACKYARD'S, RESPONDENT	* BEFORE BRIAN PATRICK WEEKS, * AN ADMINISTRATIVE LAW JUDGE * OF THE MARYLAND OFFICE OF * ADMINISTRATIVE HEARINGS * * * CPD CASE No.: 22-001-349559 * OAH No.: OAG-CPD-04-22-06374
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PROPOSED RULING ON MOTION FOR SUMMARY DECISION

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STATEMENT OF THE CASE

On March 17, 2022, the Consumer Protection Division (CPD) of the Office of the Attorney General (Proponent) filed a Statement of Charges against Patrick Michael Savage (Respondent) to enjoin the Respondent from violating the Consumer Protection Act (the Act) by engaging in unfair and deceptive trade practices and to obtain relief for consumers. *See generally* Md. Code Ann., Com. Law §§ 13-101 through 13-501 (2013 & Supp. 2021). On March 22, 2022, the CPD referred the case to the Office of Administrative Hearings (OAH), scheduled the hearing to commence on June 8, 2022, and delegated authority to the OAH to issue proposed Findings of Fact and Conclusions of Law.

On April 6, 2022, the CPD filed an affidavit of service and requested a prehearing conference (PHC) to address the conduct of the hearing. *See* Code of Maryland Regulations

(COMAR) 28.02.01.17. On April 21, 2022, Pilar Rodarte, Staff Attorney, and Niknaz McCormally, Assistant Attorney General, were present on behalf of the CPD. The Respondent failed to appear. After waiting more than fifteen minutes past the scheduled start time, I convened the PHC. For the reasons stated on the record, I found that the Respondent received proper notice.

During the PHC, the CPD requested that I defer the issuance of a default order, and I granted the request. COMAR 28.02.01.23. The CPD then requested that I convert the June 8, 2022 hearing on the merits date to a deadline for the filing of a Motion for Summary Decision by the CPD. COMAR 28.02.01.12D. In the interest of judicial economy, I granted the request. On April 26, 2022, I issued an Order memorializing the issues discussed at the April 21, 2022 PHC.

On April 25, 2022, the Proponent filed a Motion to Compel and Motion for Sanctions (Motion to Compel) against the Respondent for failing to respond to the Proponent's discovery request. The Respondent failed to respond to the Motion by May 10, 2022. COMAR 28.02.01.12B(3). On May 24, 2022, I granted the Motion to Compel but denied the request for sanctions.

On June 2, 2022, the Proponent filed a Motion to Postpone Summary Decision Filing Deadline. On June 6, 2022, I granted the Motion to Postpone. On June 17, 2022, the Proponent filed a Motion for Summary Decision. The Respondent failed to respond to the Motion for Summary Decision by the deadline of July 5, 2022. *Id.*

The contested case provisions of the Maryland Administrative Procedure Act, the CPD's procedural directives, and the OAH's Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 02.01.02 and 28.02.01.

ISSUE

Should the Proponent's Motion for Summary Decision against the Respondent be granted because no material facts are in dispute and the Respondent engaged in unfair and deceptive trade practices?

SUMMARY OF THE EVIDENCE

To support its Motion, the Proponent submitted affidavits from its Investigator, Joshua Schafer, certain affected consumers, and the Executive Director of the Maryland Home Improvement Commission, David Finneran. The affidavits set forth facts that would be admissible in evidence and affirmatively showed that the affiants were competent to testify about the matters stated therein. COMAR 28.02.01.12D(4).

A full list of the exhibits submitted by the Proponent in support of the Motion for Summary Decision is attached in an Appendix to this Decision.

UNDISPUTED FACTS

1. The Respondent has never been licensed by the Maryland Home Improvement Commission to provide home improvement services in Maryland.

John Frey

2. Mr. Frey lives in a single-family home in Forest Hill, Maryland.

3. In February 2021, Mr. Frey contacted Tri-County Pools to replace his existing above-ground pool. Tri-County Pools could not install the type of pool Mr. Frey wanted, and recommended he contact the Respondent.

4. Mr. Frey called the Respondent and the Respondent gave him a quote over the phone for the replacement of the above-ground pool.

5. On March 12, 2021, the Respondent came to Mr. Frey's home and looked at the site for the replacement of the above-ground pool. The Respondent said he would have a pool to install four to eight weeks after receiving Mr. Frey's check for the deposit.

6. The Respondent told Mr. Frey that he would purchase an above-ground pool measuring fifteen feet by twenty-four feet and fifty-two inches deep with a manufacturer warranty and a diamond liner, install the pool in the same area as the existing pool, clean up the area around the pool, and put in extra sand in the pool installation area for a total contract price of \$6,620.00.

7. The Respondent required Mr. Frey to pay a deposit of \$5,295.00 and Mr. Frey paid by personal check and executed a contract with the Respondent.

8. Mr. Frey sent text messages to the Respondent on April 22 and 23, 2021, asking for an update. The Respondent replied that he would check with his pool warehouse, then told Mr. Frey that he would have all necessary materials between May 17 and 21, 2021. The Respondent told Mr. Frey that he would install the pool on May 24, 2021.

9. On May 24, 2021, the Respondent did not appear at Mr. Frey's home to install the pool. Mr. Frey sent a text message to the Respondent, and received a response from a woman, who said she was the Respondent's mother, stating that the Respondent was in the hospital and the Respondent would call Mr. Frey back. That evening, the Respondent called Mr. Frey and rescheduled the installation for June 4, 2021.

10. On June 1, 2021, Mr. Frey received a call from the Respondent's phone number and a woman claiming to be the Respondent's mother said that a relative had passed away. Mr. Frey told the woman that the Respondent still had a responsibility to install the pool on June 4, 2021.

11. On June 4, 2021, the Respondent did not come to Mr. Frey's home to install the pool. Mr. Frey sent a text message to the Respondent but did not receive a response.

12. Mr. Frey contacted the Respondent a total of fourteen times through phone calls and text messages.

13. The Respondent did not perform any work at Mr. Frey's home and did not deliver an above-ground pool to Mr. Frey.

14. Mr. Frey did not receive a refund of the \$5,295.00 deposit that he paid to the Respondent.

15. In October 2021, Mr. Frey contacted Clear Water Pool & Spa to purchase a new above-ground pool and Floyd Co. for installation of the pool at a cost of \$8,297.01 for the above-ground pool and \$2,200.00 for installation of the pool.

Geoffrey Hill

16. Mr. Hill lives in a single-family home in Odenton, Maryland.

17. In June 2020, Mr. Hill contacted Gene Lilly Pools to install an above-ground pool in his backyard. Gene Lilly Pools informed Mr. Hill that it could not install an above-ground pool in his backyard because it was sloped, but recommended that he contact "Mike" with Extreme Backyard's and gave Mr. Hill the Respondent's contact number. Mr. Hill called the Respondent and requested that the Respondent look at his backyard and assess whether the Respondent could install an above-ground pool.

18. On June 22, 2020, the Respondent came to Mr. Hill's house. Mr. Hill told the Respondent that he has a disability and that he needed the pool to help alleviate his heat intolerance. Mr. Hill also told the Respondent that the pool was for his four medically fragile children who were at high risk of catching COVID-19. Mr. Hill also told the Respondent that he

intended to fill the pool with saltwater to help with a skin condition. The Respondent stated that he understood Mr. Hill's requirements and needs and that he could do the requested work.

19. Between June 23, 2020, and September 16, 2020, Mr. Hill and the Respondent exchanged text messages.

20. On June 23, 2020, the Respondent texted that he was "lincensed [*sic*] bonded and insured."

21. On June 25, 2020, the Respondent texted a copy of the contract, which included:

- installation of an above-ground rectangle saltwater pool that would not impede rain flow;
- installation of a deck;
- installation of a fence to prevent unauthorized access to the pool;
- installation of above-ground pool accessories including pool heater, liner, and filter; and
- installation of a French drain, grading of the backyard and installation of an electrical supply line to the pool.

22. On June 25, 2020, the Respondent sent Mr. Hill pictures of pool projects he claimed to have completed.

23. On June 27, 2020, the Respondent returned to Mr. Hill's home to pick up the deposit and bring the contract for him to sign. The total contract cost was \$14,140.00, and the Respondent required a deposit of \$10,200.00, which he stated was for the purchase of the pool and materials. Mr. Hill signed the contract and paid the Respondent by personal check in the amount of \$10,200.00.

24. The Respondent told Mr. Hill that he ordered the pool on June 30, 2020 and that the installation process would begin four weeks later.

25. On July 15, 16, 20, 21, 30 and August 3, 4, 6, 11, and 20, 2020, Mr. Hill asked for an update on the status of the project. The Respondent responded that he would have to contact the manufacturer for an update and confirmed that the pool would be delivered. The final communication between Mr. Hill and the Respondent took place on August 20, 2020, when the Respondent stated that Mr. Hill would receive his pool the following week, and that it had been delayed because of COVID-19.

26. After August 20, 2020, Mr. Hill tried to contact the Respondent multiple times but the Respondent never responded.

27. Mr. Hill tried a total of at least twenty-three times to get an installation date from the Respondent.

28. The Respondent did not perform any of the work required by the contract.

29. The Respondent did not refund the \$10,200.00 deposit to Mr. Hill.

30. In March 2021, Mr. Hill contracted with a different contractor to purchase and install an above-ground pool, at a total cost of \$21,635.00.

James Hiltz

31. Mr. Hiltz lives in a single-family home in Baltimore, Maryland. The home had an above-ground pool.

32. Mr. Hiltz's wife, Randee Wiedorfer, found a recommendation for the Respondent on Facebook. Mr. Hiltz contacted the Respondent by phone.

33. On November 2, 2020, the Respondent came to Mr. Hiltz's home with another worker. The Respondent stated that he was licensed in Maryland and qualified to do the work that Mr. Hiltz was seeking, and called himself a "reputable guy."

34. Mr. Hiltz told the Respondent that he wanted him to install a fifteen by twenty-four foot above-ground pool, liner, sand filter, and sand. Mr. Hiltz told the Respondent that he wanted

him to fit the pool into the existing structures of the deck and fence. The Respondent agreed to demolish the existing pool and remove the pool debris to make room for the new pool. The Respondent said the project would cost \$5,500.00 and that he required a deposit of \$2,500.00. The Respondent stated that he would install the pool on May 1, 2021, and attributed the delay to a pool shortage. Mr. Hiltz and the Respondent executed a contract memorializing the above requirements.

35. Mr. Hiltz paid the Respondent by personal check in the amount of \$2,500.00 on November 2, 2020.

36. On or about December 23, 2020, the Respondent asked Ms. Wiedorfer for more money for the above-ground pool, but neither she nor Mr. Hiltz paid additional money to the Respondent.

37. On April 16, 2021, the Respondent confirmed that work would begin the first week of May 2021, and asked Ms. Wiedorfer to pay the full contract price prior to the start of work.

38. The Respondent did not come to Mr. Hiltz's home during the first week of May 2021, and reset the demolition date for May 10, 2021.

39. On May 10, 2021, the Respondent came to Mr. Hiltz's home with another employee and demolished the existing pool. Mr. Hiltz asked him to remove the pool debris, but the Respondent refused to do so. The Respondent stated that he would install the new pool on May 13, 2021.

40. The Respondent did not come to Mr. Hiltz's home on May 13, 2021. The next day, the Respondent sent text messages to Mr. Hiltz and stated that he had been in the hospital and offered a refund.

41. The Respondent never returned to Mr. Hiltz's home to remove the debris or to install the pool.

42. On May 27, 2021, Mr. Hiltz asked the Respondent for a refund of the deposit. On May 28, 2021, the Respondent called Mr. Hiltz and stated that he would receive the money in ten business days. On June 4, 2021, the Respondent called Mr. Hiltz and confirmed he would receive the refund by June 11, 2021.

43. The Respondent never refunded the deposit to Mr. Hiltz.

44. In July 2021, Mr. Hiltz hired other vendors to purchase and install an above-ground pool at an additional expense of approximately \$6,900.00.

45. On April 27, 2022, the Respondent emailed James Hindle and stated that "just wanna let you know my accountant did my taxes and mail you and Jim a check you should have it in about 14 business days." Mr. Hindle forwarded the email to Mr. Hiltz, his neighbor.

James Hindle

46. Mr. Hindle lives in a single-family home in Baltimore, Maryland.

47. In September 2020, Mr. Hindle found the Respondent's contact information on Facebook.

48. On December 13, 2020, the Respondent came to Mr. Hindle's home to assess the property for an above-ground pool. The Respondent agreed to purchase and install the pool, and excavate a portion of Mr. Hindle's backyard. The Respondent drafted a contract to purchase a fifteen by thirty foot above-ground pool with accessories and install it; Mr. Hindle signed the contract. The total contract price was \$9,399.00.

49. The Respondent required a deposit of \$7,199.00 to purchase the pool and start the project and Mr. Hindle's partner paid by personal check.

50. On April 14, 2021, the Respondent notified Mr. Hindle that the pool would be at a Baltimore warehouse on April 22, 2021, and would be installed the first week of May 2021, later changing the installation date to May 19, 2021.

51. On May 19, 2021, the Respondent came to Mr. Hindle's home with excavation equipment. The Respondent did not bring any pool parts, and Mr. Hindle told him he needed a definite plan for where to put the dirt before beginning to excavate. The Respondent left the property because he did not know where to put the dirt.

52. The Respondent sent a text message to Mr. Hindle later that day and agreed to get a dumpster for the dirt and return to his home on May 28, 2021.

53. On May 27, 2021, the Respondent called Mr. Hindle to tell him that he could not come to his home on May 28, 2021, because his grandmother was dying and he was busy treating his dog's cancer. Mr. Hindle asked for a refund, the Respondent agreed.

54. On April 27, 2022, the Respondent emailed Mr. Hindle and stated that "just wanna let you know my accountant did my taxes and mail you and Jim a check you should have it in about 14 business days."

55. The Respondent never delivered or installed a pool in Mr. Hindle's yard.

56. The Respondent never returned Mr. Hindle's deposit.

Russell Holt

57. Mr. Holt lives in a handicapped-accessible single-family home in Boyds, Maryland.

58. Mr. Holt is disabled and uses a wheelchair.

59. In December 2020, Mr. Holt investigated purchasing an above-ground pool. He reviewed Facebook and Nextdoor advertisements and found the Respondent, whom he then contacted.

60. In February 2021, the Respondent came to Mr. Holt's house to assess his yard for an above-ground pool. Mr. Holt told the Respondent that he was seeking to install a sixteen by twenty-eight foot above-ground pool, complete with pool accessories such as a liner, filter, pump, skimmer, return and light, heater, pool cover, pool stairs, and oxygen system. Mr. Holt explained that the pool was for his wife's therapeutic relief since she has a medical condition and is immunocompromised. Mr. Holt told the Respondent that he needed the pool installed by the end of May 2021.

61. On February 23, 2021, the Respondent returned to Mr. Holt's home with the contract, for a total price of \$10,379.00 with an additional cost for the heater and pool cover to be determined later. The Respondent required an up-front deposit of \$8,089.00. Mr. Holt paid the deposit by personal check, and his wife signed the contract. The Respondent stated that he could have the pool installed around Memorial Day, but could not give a specific date until the pool was delivered.

62. Around March 2021, the Respondent asked for an additional \$3,285.00 for the pool heater and automatic pool cover. As instructed by the Respondent, Mr. Holt paid the Respondent's wife, Chase Polk, through her Zelle mobile banking account.

63. In May 2021, the Respondent texted Mr. Holt that he had received the pool, but that sand and other pool materials would be sent direct to Mr. Holt's home. The Respondent also informed Mr. Holt that he needed to excavate his backyard with a backhoe to make space for the pool.

64. On June 6, 2021, the Respondent came to Mr. Holt's home with an employee to excavate the backyard. He told Mr. Holt he could not install the pool the next day as he had planned because his grandmother had just died, but that he could install the pool on June 10, 2021. The Respondent dug a large hole in Mr. Holt's backyard and then left the property.

65. The Respondent did not return to Mr. Holt's home after June 6, 2021.

66. In August 2021, Mr. Holt requested and received a refund of the payment of \$3,285.00 from Ms. Polk. Mr. Holt never received a refund of the \$8,089.00 deposit.

67. The Respondent did not install or deliver a pool for Mr. Holt.

68. In spring 2022, Mr. Holt executed additional contracts with other contractors to purchase and install a pool at a cost of approximately \$11,000.00. Mr. Holt also had to pay \$600.00 to fill the hole that the Respondent excavated. Mr. Holt's wife had to have her physical therapist come to her home for physical therapy rather than swimming in the pool, which cost her extra money in insurance copays.

Donald Price

69. Mr. Price lives in a single-family home in Glen Burnie, Maryland.

70. In March 2022, Mr. Price sought recommendations via Facebook for someone who could install a pool liner in his existing above-ground pool. A friend of a friend sent him a private message and recommended that Mr. Price contact the Respondent.

71. On March 8, 2022, the Respondent sent a text message to Mr. Price with a quote of \$745.00 to install the liner. The Respondent spoke with Mr. Price and assured him he could complete the job in about a week and that Mr. Price would not have to be home for the Respondent to complete the job. Mr. Price paid \$745.00 to the Respondent by personal check.

72. On March 18, 2022, the Respondent sent a text message to Mr. Price stating that the liner had shipped.

73. On April 7, 2022, the Respondent sent a text message to Mr. Price stating that he had received the liner.

74. Between April 3 and May 4, 2022, Mr. Price repeatedly texted the Respondent to inquire about the installation of the liner, but the Respondent never came to Mr. Price's home to

install the liner. The Respondent offered various reasons why he could not install the liner, including bad weather, a family health emergency, a death in the family, and a damaged hub bearing on his trailer.

75. On May 21, 2022, the Respondent came to Mr. Price's home and cut the old liner out of his pool with a razor blade, threw the liner in the yard, and then left. The removal of the liner caused the pool to be unusable.

76. The Respondent never installed or delivered the new liner to Mr. Price.

77. The Respondent never returned the \$745.00 to Mr. Price.

Steven Copinger

78. On April 29, 2021, Mr. Copinger, who had known the Respondent for over twenty years, paid the Respondent a deposit of \$8,385.00 after the Respondent told him he had a pool company.

79. On or about June 15, 2021, the Respondent dug a hole in Mr. Copinger's yard and left the dirt in his yard, destroying most of the yard.

80. On June 18, 2021, the Respondent returned to fill the hole and said he would return the deposit to Mr. Copinger.

81. On June 30, 2021, the Respondent returned \$500.00 to Mr. Copinger.

82. On July 2, 2021, the Respondent returned \$1,100.00 to Mr. Copinger.

83. On July 13, 2021, the Respondent returned \$500.00 to Mr. Copinger.

84. On July 29, 2021, the Respondent returned \$2,000.00 to Mr. Copinger.

85. The Respondent never returned the remaining \$4,285.00 to Mr. Copinger.

Barbara Davis

86. On September 5, 2020, Ms. Davis gave the Respondent a \$1,577.00 check for a new pool wall and new pool entry steps.

87. The Respondent never delivered the promised goods nor did he install the wall and entry steps, despite repeated communications from Ms. Davis.

88. The Respondent never returned the \$1,577.00 to Ms. Davis.

Muhammad Ghanizadeh

89. Mr. Ghanizadeh lives in Derwood, Maryland.

90. In September 2020, Mr. Ghanizadeh was interested in having a swimming pool installed in his backyard and viewed a Facebook post by the Respondent and then reached out to the Respondent.

91. The Respondent told Mr. Ghanizadeh that he could construct a pool in his backyard.

92. On November 11, 2020, the Respondent went to Mr. Ghanizadeh's home and they executed a contract and Mr. Ghanizadeh paid a deposit of \$6,644.95 by check.

93. The contract stated that the job would be completed in three weeks.

94. Between November 2020 and March 2021, Mr. Ghanizadeh contacted the Respondent multiple times to inquire as to the status of the project. The Respondent provided various excuses as to why he had not yet begun the work, including poor weather and materials being on back order. The Respondent did not provide Mr. Ghanizadeh with proof that the materials had been ordered.

95. On an unspecified date, Mr. Ghanizadeh confronted the Respondent about the delays, and the Respondent laughed at him and stated that there was nothing Mr. Ghanizadeh could do because the courts were so backed up.

96. Mr. Ghanizadeh requested a refund, and the Respondent informed him that he would receive it in ten business days. Mr. Ghanizadeh never received a refund from the Respondent.

Jennifer Green

97. In or around April 2021, another customer of the Respondent referred Ms. Green to the Respondent for removal of her existing pool and installation of a new pool.

98. The Respondent told Ms. Green that the project would take three weeks.

99. The Respondent sent a quote to Ms. Green of \$4,250.00 and on April 30, 2021, requested that she pay for the pool up front.

100. On May 3, 2021, Ms. Green paid the Respondent \$4,377.50.

101. On multiple occasions in May 2021, Ms. Green contacted the Respondent about the status of the project. On May 25, 2021, he stated that she would be on the schedule for the week of June 7, 2021. The Respondent did not show up to install the pool during that week.

102. On June 14, 2021, the Respondent came to remove the old pool and requested an additional \$500.00, which Ms. Green paid to him. The Respondent took down the old pool and left it in her yard.

103. The Respondent told Ms. Green that she needed a ladder or steps for the new pool, and she paid \$365.00 on June 21, 2021 for steps.

104. The Respondent told Ms. Green that she was scheduled for July 8, 2021, and then failed to show up on that day.

105. On July 12, 2021, sand was delivered to Ms. Green's house and left uncovered on her street.

106. Ms. Green paid the Respondent a total of \$5,242.50. The Respondent never returned the money nor did he complete the agreed-upon work.

Alex Hyesukovich

107. On or about January 16, 2021, Mr. Hyesukovich reached an oral agreement with the Respondent to install a swimming pool for a total cost of \$6,500.00.

108. Mr. Hyesukovich paid the Respondent \$4,500.00.

109. The Respondent never installed the swimming pool for Mr. Hyesukovich.

Emily Herzing

110. Ms. Herzing lives in Sykesville, Maryland.

111. On February 16, 2021, after seeing an advertisement for the Respondent on social media, Ms. Herzing sent a text message to the Respondent informing him of her interest in installing an above-ground pool. The Respondent provided a price for the pool that Ms. Herzing was interested in, including a pump, filter, skimmer, return, liner, and cover. Ms. Herzing sent a text message to the Respondent which stated, "and I assume you are licensed and insured" and the Respondent replied, "O yes, \$1,000,000." Ms. Herzing inquired about pulling the necessary building permits for the pool and the Respondent replied, "Ok that's no problem I can work on that as soon as we order the pool it's just easier for me to do it cause I dot [sic] them a lot."

112. On February 18, 2021, the Respondent came to Ms. Herzing's home and she paid him \$5,394.25 by personal check. The Respondent stated that it would take four to six weeks for the pool to arrive.

113. On February 22, 2021, Ms. Herzing paid an additional \$1,436.00 for a gas heater for the pool. The Respondent never submitted an invoice or receipt for the heater.

114. On March 18, 2021, the Respondent sent a text message to Ms. Herzing and told her that he ordered steps for her. Ms. Herzing paid an additional \$381.00 for the steps. The Respondent did not submit an invoice or receipt for the steps.

115. The Respondent never provided proof that he had submitted the building permit.

116. On April 6, 2021, Ms. Herzing's husband, Ryan Herzing, requested a cancellation of the order and a full refund of the \$7,211.25 that had been paid to the Respondent. The Respondent stated multiple times that Ms. Herzing would receive a refund. On May 14, 2021,

the Respondent sent a refund of \$500.00 to Ms. Herzing. The Respondent never returned the remaining \$6,711.25.

Gina Dolezar

117. Ms. Dolezar lives in Severn, Maryland.

118. On an unspecified date, staff at Gene Lilly Pools and Spas referred Ms. Dolezar to the Respondent.

119. On June 11, 2020, Ms. Dolezar met with the Respondent at her residence, and the Respondent advised her that the total cost to install a pool at her residence would be \$16,896.00. The Respondent told her that she could pay him directly for the pool and he would have it delivered to her residence in about two weeks. Ms. Dolezar and the Respondent signed a work contract/invoice, and Ms. Dolezar sent the Respondent \$5,998.99 by Venmo and \$10,898.00 in cash for a total of \$16,896.99.

120. The Respondent told Ms. Dolezar that he would begin the project within fourteen to twenty business days from receipt of the deposit.

121. The Respondent told Ms. Dolezar on multiple occasions that there had been a delay with the shipping of the pool.

122. The Respondent refunded \$4,550.00 to Ms. Dolezar, but never returned the remaining \$12,346.99.

123. The Respondent never began work on the project at Ms. Dolezar's residence.

Tina Benzing

124. Ms. Benzing lives at a single-family home in Perry Hall, Maryland.

125. On March 15, 2021, Ms. Benzing contacted the Respondent to obtain a quote to install an inflatable pool in her backyard. She later inquired whether he could purchase and install a ladder and pump for the pool.

126. The Respondent stated to Ms. Benzing that he could set up the inflatable pool, offered to order a ladder for \$318.00 and a pump for \$425.00, and told her that she had been put on his schedule for the second week of May 2021.

127. On April 19, 2021, Ms. Benzing sent \$743.00 to the Respondent using the CashApp application.

128. On May 27, 2021, the Respondent came to Ms. Benzing's home and began to set up the inflatable pool, but left before completing the project.

129. Ms. Benzing contacted the Respondent multiple times between May 27, 2021 and June 13, 2021, with no response from the Respondent.

130. On June 13, 2021, the Respondent promised to come to Ms. Benzing's house on June 15, 2021. The Respondent did not come to Ms. Benzing's home on that date.

131. After June 15, 2021, Ms. Benzing contacted the Respondent multiple times through phone calls and text messages, but he never responded to her.

132. On July 4, 2021, Ms. Benzing requested a refund.

133. The Respondent never provided a refund to Ms. Benzing.

134. The Respondent never finished installing the pool, nor did he provide the pool ladder, pump, and filter to Ms. Benzing.

Carl Starr

135. In August 2020, Mr. Starr hired the Respondent to purchase and install a vinyl fence.

136. On August 5, 2020, Mr. Starr paid \$2,575.00 to the Respondent.

137. On August 12, 2020, Mr. Starr paid \$2,575.00 to the Respondent.

138. On both above transactions, there was a \$128.75 transaction fee.

139. On August 24, 2020, Mr. Starr paid the Respondent \$2,360.00 by check.

140. The Respondent never delivered or installed the fence.

141. The Respondent never returned the \$7,510.00 that Mr. Starr paid to him.

DISCUSSION

I. Motion for Summary Decision

The OAH's Rules of Procedure provide for consideration of a motion for summary decision under COMAR 28.02.01.12D. The regulations provide as follows:

D. Motion for Summary Decision.

(1) A party may file a motion for summary decision on all or part of an action on the ground that there is no genuine dispute as to any material fact and the party is entitled to judgment as a matter of law.

(2) A motion for summary decision shall be supported by one or more of the following:

- (a) An affidavit;
- (b) Testimony given under oath;
- (c) A self-authenticating document; or
- (d) A document authenticated by affidavit.

(3) A response to a motion for summary decision:

- (a) Shall identify the material facts that are disputed; and
- (b) May be supported by an affidavit.

(4) An affidavit supporting or opposing a motion for summary decision shall:

- (a) Conform to Regulation .02 of this chapter;
- (b) Set forth facts that would be admissible in evidence; and
- (c) Show affirmatively that the affiant is competent to testify to the matters

stated.

(5) The ALJ may issue a proposed or final decision in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.

As required, the Proponent supported its Motion with affidavits and authenticated documents.

COMAR 28.02.01.12D(2).

To prevail on a motion for summary decision, the moving party must identify the relevant legal cause of action or legal defense and then set forth sufficient, undisputed facts to satisfy the elements of the claim or defense, or detail the absence of evidence in the record to support an opponent's claim. *See Bond v. NIBCO, Inc.*, 96 Md. App. 127, 134-36 (1993). If the moving party meets this initial burden, the opposing party must come forward with admissible evidence

that establishes a genuine dispute of material fact, after all reasonable inferences are drawn in the opposing party's favor. *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 737-39 (1993); *see also Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 520 (1991) (stating that a judge must "draw all justifiable inferences in favor of the nonmoving party").

II. Applicable Law

The Act prohibits a person from engaging in "any unfair, abusive, or deceptive trade practice, as defined in this subtitle or as further defined by the Division" in connection with, *inter alia*:

- (1) The sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services;
- (2) The offer for sale, lease, rental, loan, or bailment of consumer goods, consumer realty, or consumer services[.]

Md. Code Ann., Com. Law § 13-303 (Supp. 2021).

The Act specifically defines an "unfair, abusive, or deceptive trade practice" to include, as charged by the CPD:

- (1) False, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers;
- (2) Representation that:
...
(ii) A merchant has a sponsorship, approval, status, affiliation, or connection which he does not have . . . [or]
- (3) Failure to state a material fact if the failure deceives or tends to deceive[.]

Id. § 13-301 (Supp. 2021).

Generally, to establish deception there must be a false or misleading statement that has a tendency to mislead consumers or an omission of material fact that has the tendency to deceive.

Id. The Act covers both express and implied representations: "the meaning of any statement or representation is determined not only by what is explicitly stated, but also by what is reasonably implied." *Golt v. Phillips*, 308 Md. 1, 9 (1986). In determining if an omission is material, the

inquiry is whether “a significant number of unsophisticated consumers would find that information important in determining a course of action.” *Green v. H & R Block*, 355 Md. 488, 524 (1999).

Section 13-301 is not an exclusive list of the practices that may be considered unfair, abusive, or deceptive. General “unfairness” is a separate standard under the Act and was discussed in depth by the Court of Special Appeals in *Legg v. Castruccio*, 100 Md. App. 748 (1994). In *Legg*, the Court of Special Appeals held that whether a practice is “unfair” within the meaning of Section 13-303 of the Act primarily turns on whether it causes or is likely to cause a substantial injury to a consumer, which is not reasonably avoided by the consumer, and which is not outweighed by a countervailing benefit to consumers or competition. *Id.* at 771-72.

The Legislature has directed that the Act “shall be construed and applied liberally to promote its purpose.” Com. Law § 13-105 (2013). The courts have repeatedly recognized this legislative directive that the Act be given a liberal construction applied consistent with the remedial purpose. *See, e.g., State v. Cottman Transmissions Sys., Inc.*, 86 Md. App. 714, 743 (1991). The Court of Appeals has recognized that the CPD has “broad powers to enforce and interpret the [Act].” *Consumer Protection Div. v. Consumer Publishing Co., Inc.* 304 Md. 731 (1985); *see also* Com. Law. § 13-204(a) (Supp. 2021). To this end, the CPD is not required to prove that any consumer has been deceived or harmed to establish a violation of the Act. *See* Com. Law § 13-302 (2013).

III. Analysis

The Proponent argued that no material facts are in dispute and it is entitled to judgment as a matter of law. The Proponent argued that the Respondent committed deceptive trade practices in violation of the Act by (1) making false and misleading statements to consumers; (2) representing that he was a licensed home-improvement contractor; and (3) omitting material facts when dealing

with consumers. The Proponent argued that the Respondent also committed unfair trade practices in violation of the Act. I conclude that no material fact is in dispute and the Proponent is entitled to judgment as a matter of law because the Respondent committed deceptive trade practices and unfair trade practices in his dealings with consumers.

A. No Material Facts Are In Dispute

The Respondent has not participated in any proceedings in this matter. He failed to appear for the pre-hearing conference and did not respond to the Motion for Summary Decision. Accordingly, there are no disputes of material fact.

B. The Respondent Offered and Sold Consumer Goods and Services

The Respondent offered and sold consumer goods and services when he discussed and then entered into contracts with consumers for pool delivery, installation, repair, and improvements. *See* Com. Law § 13-101(c) (Supp. 2021) (defining consumer), (d)(1) (defining *inter alia* consumer goods and consumer services); (i)(2) (defining sale to include a “service or offer for service which relates to any person, building, or equipment.”); (j) (defining service).

C. The Respondent Engaged in Unfair and Deceptive Trade Practices in Violation of the Act

1. The Respondent Made False or Misleading Oral and Written Statements Which Had the Capacity, Tendency, or Effect of Misleading Consumers

The Act list several unfair, abusive, or deceptive trade practices, including any “false . . . or misleading oral or written statement . . . or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers.” *Id.* § 13-301(1).

The Respondent made the following false or misleading oral or written statements:

- Impliedly misrepresenting that he was authorized to offer and sell home improvement goods and services even though he did not have the required home improvement contractor’s license;

- Impliedly misrepresenting that he was authorized to collect deposits and upfront payments;
- Misleading consumers by taking their deposits, and misrepresenting that he was willing to complete the agreed-upon work;
- Making false and misleading statements when he rescheduled consumer appointments for delivery or installation of pool materials, and then failed to appear at the consumers' residences;
- Making false and misleading statements when he stated that he had ordered pools and related accessories even though he had not; and
- Making false and misleading statements to consumers regarding the status of their refunds.

Multiple consumers entered contracts with and paid excessive deposits to the Respondent even though he was not legally authorized to provide home improvement services and had no intention of completing the work. Further, the affidavits and supporting documentation amply demonstrate that the Respondent deceived and misled consumers regarding the status of their projects and refunds.

2. *The Respondent Expressly and Impliedly Represented That He Had a Status, Licensed Home Improvement Contractor, That He Did Not Have*

The Act lists as an unfair, abusive, or deceptive trade practice any representation that “a merchant has a . . . status which he does not have.” Com. Law § 13-301(2)(ii). The Respondent is a merchant as defined by the Act because he offered his pool installation and repair services to consumers. *See Id.* § 13-101(g). The Respondent expressly told Mr. Hill, Mr. Hiltz, and Ms. Herzing that he was licensed. The Respondent impliedly represented to the other consumers that he was legally permitted to provide home improvement services. The Respondent was at all times relevant an unlicensed home improvement contractor, and therefore he lacked the legal

status to offer or sell home improvement services to Maryland consumers. *See* Maryland Home Improvement Law, Md. Code Ann., Bus. Reg. §§ 8-101 through 8-802 (2015 & Supp. 2021).

3. *The Respondent Failed to State a Material Fact and the Failure Deceived or Tended to Deceive*

The Act defines unfair, abusive, or deceptive trade practices to also include any “failure to state a material fact if the failure deceives or tends to deceive.” Com. Law § 13-301(3). The most obvious material fact that the Respondent failed to state to consumers was the fact that he was not licensed to do the work he had agreed to undertake. Further, he failed to state that he was not able to provide the promised home improvement goods and services, both because he lacked the required license and the required technical expertise as exhibited by his failure to complete a single project. Finally, he did not tell consumers that he would not refund their money. These facts are clearly material because a “significant number of unsophisticated consumers would find [the facts] important in determining a course of action”, in this instance, whether to hire the Respondent. *Green v. H & R Block*, 355 Md. 488, 524 (1999). Further, the Respondent’s failure to state these material facts tended to deceive consumers, as evidenced by the numerous consumers that entered into agreements and paid deposits to the Respondent.

4. *The Respondent Engaged In Unfair Trade Practices When He Caused Substantial Injury to Consumers*

As noted above, whether a practice is “unfair” within the meaning of Section 13-303 of the Act primarily turns on whether it causes or is likely to cause, a substantial injury to a consumer, which is not reasonably avoided by the consumer, and which is not outweighed by a countervailing benefit to consumers or competition. *See Legg v. Castruccio*, 100 Md. App. 748 (1994) (adopting the Federal Trade Commissions’ unfairness doctrine in private actions for damages under the Act).

Here, the Respondent's actions caused substantial injury to consumers. Except for one consumer who lost a little less than a thousand dollars, each consumer lost more than a thousand dollars, and some lost over ten thousand dollars because of the Respondent's actions. Some consumers chose to pay additional money to other contractors for the work agreed to by the Respondent. In addition to the financial injury, most consumers, including consumers with disabilities who sought pool installation to alleviate their disabilities, were left with no pool. Finally, the Respondent's deceit regarding his licensing status precluded these consumers from seeking compensation from the Home Improvement Guaranty Fund, compounding their financial injury. There is no way that the consumers could have known that the Respondent had no intention of fulfilling the terms of the contracts. Finally, the substantial injuries suffered by the consumers are not outweighed by any benefit to consumers or competition. Accordingly, the Respondent engaged in unfair trade practices. *Id.*; Com. Law § 13-303.

PROPOSED CONCLUSION OF LAW

Based upon the above Discussion, I conclude as a matter of law that no material fact is in dispute and the Respondent engaged in unfair and deceptive trade practices. COMAR 28.02.01.12D; Md. Code Ann., Com. Law § 13-303 (Supp. 2021); Md. Code Ann., Com. Law § 13-301 (Supp. 2021). Accordingly, the CPD's Motion for Summary Decision is **GRANTED**.

July 25, 2022
Date Ruling Issued

Brian Patrick Weeks

Brian Patrick Weeks
Administrative Law Judge

BPW/dlm
#199469

NOTICE OF RIGHT TO FILE EXCEPTIONS

A party aggrieved by this proposed decision may file exceptions thereto and request an opportunity to present oral argument. Such exceptions and any request for argument must be made within thirty (30) days from the date of this proposed decision. Md. Code Ann., State Gov't §§ 10-216, 10-221 (2021); COMAR 28.02.01.25. The written exceptions and request for argument, if any, should be directed to Clerk, Administrative Hearings, Consumer Protection Division, 200 St. Paul Place, 16th Floor, Baltimore, Maryland 21202. The Office of Administrative Hearings is not a party to any review process.

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CONSUMER PROTECTION
DIVISION, OFFICE OF THE
ATTORNEY GENERAL,
PROPONENT

v.

PATRICK MICHAEL SAVAGE,
D/B/A EXTREME BACKYARD'S,
RESPONDENT

* BEFORE BRIAN PATRICK WEEKS,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
*
*
* CPD CASE No.: 22-001-349559
* OAH No.: OAG-CPD-04-22-06374

* * * * *

APPENDIX – FILE EXHIBIT LIST

The following documents were submitted with the CPD's Motion for Summary Decision:

- Ex. 1 Affidavit of Joshua J. Schafer, CPD Investigator, March 31, 2022
- Ex. 2 Affidavit of John Frey, June 6, 2022, with two attached exhibits¹
- Ex. 3 Affidavit of Geoffrey Hill, June 9, 2022, with three attached exhibits²
- Ex. 4 Affidavit of James Hiltz, June 15, 2022, with four attached exhibits³
- Ex. 5 Affidavit of James Hindle, June 15, 2022, with four attached exhibits⁴
- Ex. 6 Affidavit of Russell Holt, June 6, 2022, with three attached exhibits⁵
- Ex. 7 Affidavit of Donald Price, June 8, 2022, with three attached exhibits⁶
- Ex. 8 Affidavit of David Finneran, Executive Director, Maryland Home Improvement Commission, March 9, 2022

¹ The CPD redacted sensitive Personal Identifying Information. The CPD can provide unredacted original documents upon request.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

- Ex. 9 Case file for *Frey v. Savage*, No. D-09-CV-22-007014, District Court of Maryland for Harford County⁷
- Ex. 10 Case file for *Copinger v. Extreme Backyards, LLC*, No. D-08-CV-21-033048, District Court of Maryland for Baltimore County
- Ex. 11 Case file for *State v. Savage*, No. D-08-CR-21-001100, District Court of Maryland for Baltimore County
- Ex. 12 Case file for *Davis v. Savage*, No. 0101-0001421-2021, District Court of Maryland for Baltimore City
- Ex. 13 Case file for *State v. Savage*, No. 4D00415314, District Court of Maryland for Montgomery County⁸
- Ex. 14 Case file for *State v. Savage*, No. D-08-CR-21-001109, District Court of Maryland for Baltimore County
- Ex. 15 Case file for *State v. Savage*, No. D-08-CR-21-010960, District Court of Maryland for Baltimore County
- Ex. 16 Case file for *State v. Savage*, No. D-102-CR-21-000708, District Court of Maryland for Carroll County
- Ex. 17 Case file for *State v. Savage*, No. C-02-CR-21-001955, Circuit Court for Anne Arundel County and No. D-07-CR-21-008714, District Court of Maryland for Anne Arundel County⁹
- Ex. 18 Affidavit of Tina Benzing, June 16, 2022, with two attached exhibits
- Ex. 19 Case file for *Starr v. Savage*, No. 06-02-0016533-2020, District Court of Maryland for Montgomery County
- Ex. 20 *Consumer Protection Division v. T-Up, Inc.*, CPD No. 98-005, Final Order and Findings of Fact and Conclusions of Law, May 5, 2000
- Ex. 21 *Consumer Protection Division v. Clack*, CPD No. 11-037-207106, Final Order and Findings of Fact and Conclusions of Law, July 5, 2012
- Ex. 22 *Consumer Protection Division v. All State Plumbing, Inc.*, CPD No. 12-003-210734, Final Order and Findings of Fact and Conclusions of Law, January 3, 2013
- Ex. 23 *Consumer Protection Division v. Flynn*, CPD No. 14-016-242672, Final Order and Findings of Fact and Conclusions of Law, December 14, 2015

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

- Ex. 24 *Consumer Protection Division v. Future Income Payments, LLC*, CPD No. 18-013-296084, Final Order and Findings of Fact and Conclusions of Law, April 17, 2019
- Ex. 25 Case file for *State v. Savage*, No. 0B02445373, District Court of Maryland for Baltimore City
- Ex. 26 Case file for *State v. Savage*, No. 6B02443986, District Court of Maryland for Baltimore City