

**IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DISTRICT OF COLUMBIA,

Plaintiff,

v.

INSUN HOFGARD, et al.,

Defendants.

Civil Action No. 2015 CA 003354 B

CONSENT JUDGMENT AND ORDER

This matter comes before the Court on the joint motion of Plaintiff, the District of Columbia, (“District”) and Defendants, Insun and Jefferson Hofgard (the “Hofgards” and collectively with the District, the “Parties”), pursuant to SCR-Civil 68-I, for entry of this Consent Judgment and Order (“Judgment”).

NOW THEREFORE, based on the Parties’ consent and the record in this case, the Court enters this Consent Judgment and Order:

I. THE PARTIES

1. Plaintiff, the District, a municipal corporation created by an Act of Congress, is the local government for the territory constituting the permanent seat of government of the United States. The District, through its Attorney General, enforces the District of Columbia Consumer Protection Procedures Act (“CPPA”), D.C. Code §§ 28-3901, *et seq.*, as well as other consumer laws. The Attorney General is authorized to bring court actions seeking injunctive relief, restitution, civil penalties, costs and attorney’s fees for violations of the CPPA. Pursuant

to D.C. Code § 6-1407, the Attorney General is also authorized to seek injunctive relief for violations of the District of Columbia Construction Codes (“Construction Codes”).

2. Defendant Insun Hofgard resides in Virginia and her home and business address is 9385 Juhasz Drive, Great Falls, Virginia.

3. Defendant Jefferson Hofgard resides in Virginia and his home and business address is 9385 Juhasz Drive, Great Falls, Virginia.

II. DEFINITIONS

4. “Notice of Infraction” for purposes of this Judgment shall mean any formal notice issued by the District of Columbia Department of Consumer and Regulatory Affairs (“DCRA”) finding a violation of either applicable Construction Codes or zoning requirements.

5. “Construction Codes” for purposes of this Judgment shall have the same meaning as that term is defined in D.C. Code § 6-1401(4): “the consolidation of Model Codes, the Building Rehabilitation Code, the D.C. Supplement, and the provisions of this act [creating the Construction Codes], and any future amendments, supplements, or editions authorized by [D.C. Code] § 6-1409.”

III. PROCEDURAL HISTORY AND DISTRICT’S ALLEGATIONS

6. The District commenced this action with the filing of its Complaint on May 7, 2015.

7. In its action, the District alleges that the Hofgards have violated the Construction Codes and the CPPA by engaging in unlawful and deceptive trade practices in connection with their offer and sale of residential real property to District residents. Specifically, the District alleges that:

- a. The Hofgards offer and sell renovated residential properties in the District of Columbia. In the process, the Hofgards performed sub-standard construction work, used sub-standard materials, and made renovations or repairs that were of sub-standard quality. The Hofgards' renovations or modifications were not performed according to the relevant Construction Codes and were often not performed by licensed contractors. The Hofgards also regularly exceeded the scope of applicable permits or zoning regulations and neglected to have the properties properly inspected at the required times, facts they did not disclose to consumers;
- b. In the course of offering and selling their residential properties to consumers, the Hofgards misrepresented, or failed to disclose, the true, sub-standard nature of the repairs, remodeling, and construction the Hofgards performed on these properties, and the condition of the properties at sale, facts that were material to consumers;
- c. The Hofgards' misrepresentations and material omissions of fact are unlawful practices that violate the CPPA; and
- d. Consumers who purchased properties were harmed because the properties purchased from the Hofgards were worth considerably less than the purchase price. The Hofgards' disregard for Construction Code requirements also caused damage to neighboring properties.

8. On August 17, 2015, the Hofgards filed their Answers to the District's Complaint, denying that they have violated the CPPA and Construction Codes and claiming they are not otherwise liable to the District.

9. On November 19, 2015, the Office of Administrative Hearings entered a Final Order finding the Hofgards and various limited liability companies liable for violations of the Construction Codes that were the subject of twenty-five separate Notices of Infraction and ordering the named respondents to pay aggregated fines of \$301,500 (the “Fines”). That Final Order recognized the Fines could be used by the District in this case to pay restitution to consumers harmed by the Hofgards or their LLCs’ real estate practices.

10. On March 22, 2016, the Superior Court entered an Order and Judgment requiring the Hofgards and various respondent limited liability companies to pay \$301,500 into the Court’s registry for use by the District to pay restitution to consumers harmed by their real estate practices.

11. In order to avoid costly and protracted litigation, the Parties have agreed to the relief set forth in this Judgment in order to fully resolve this action, including all claims that the District could have brought pursuant to the CPPA against the Hofgards based on the conduct alleged in the Complaint. This Judgment creates no third-party beneficiaries and only the District may seek enforcement of this Judgment.

12. The Hofgards deny liability for all claims and causes of action asserted against them in this litigation and have entered into this compromise settlement for the purpose of avoiding litigation. This Consent Judgment shall never be treated as an admission of liability or as an admission of any facts by the Defendants.

IV. APPLICATION

13. The provisions of this Judgment shall apply to the Hofgards’ ownership, construction activities, and offer or sale of residential real-estate in the District of Columbia.

14. The injunctive provisions of this Judgment shall apply to the fullest extent permissible under SCR-Civil 65(d).

V. INJUNCTIVE TERMS

15. The Hofgards shall not engage in any unlawful practice prohibited by the Consumer Protection Procedures Act, D.C. Code §§ 28-3901, *et seq.*

16. The Hofgards shall not make any oral or written statements that mislead or have the tendency to mislead consumers.

17. The Hofgards shall not fail to state a material fact, the omission of which deceives or tends to deceive consumers.

18. The Hofgards shall not misrepresent that any goods or services have a sponsorship, approval, certification, characteristic or other status that they do not have.

19. Except as set forth in this Judgment, the Hofgards shall cease all activities in connection with the construction, offer or sale of residential real-estate in the District of Columbia.

20. Notwithstanding the foregoing restriction, in connection with winding up their residential real-estate activities in the District of Columbia, the Hofgards may, with the written authorization of the District, on a property by property basis, and in compliance with the District's Construction Codes and other laws, perform, arrange, direct, or participate in construction work or inspections in the District of Columbia for the sole purpose of maximizing the resale value of such properties and selling them (the "Winding Up Process"). In connection with the Winding Up Process, the Hofgards shall repair, or pay for the cost of repairs, of any damages they or their employees, agents, servants or contractors have caused, at any time, to any properties neighboring the Hofgards' residential properties.

VI. PAYMENT TERMS

21. The Hofgards shall pay restitution to the District equal to the diminished value of each residential property the Hofgards sold to consumers residing in the District (the “Restitution Amount”). Such Restitution Amount shall include in any calculation the diminished value or the cost to repair or remove any defects or conditions in the affected properties that existed at the time of sale in order to bring the properties into full compliance with the Construction Codes, zoning laws and/or housing regulations and be measured as the lesser of the following: (i) the difference between the price paid by the consumer for the property and the actual value of the property at the time of sale as a result of any violations of the Construction Codes, zoning laws and/or housing regulations, or any condition of the property existing at the time of sale (the “Diminished Value”), or (ii) the amount of the reasonable estimate for all necessary repairs to the property in order to remove or remediate any violations of the Construction Codes, zoning laws and/or housing regulations, or any condition of the property existing at the time of sale, calculated as the average of three (3) bids obtained from contractors licensed to perform construction in the District (the “Repair Value”). The District shall conduct a claims procedure to determine the Restitution Amount for each residential property covered by this Judgment consistent with the terms that are set forth herein in paragraphs 21 - 30 of this Judgment.

22. The Hofgards shall pay the District an initial restitution payment in the amount of One Million Dollars (\$1,000,000.00), which amount shall be deposited into the Court’s registry, consistent with this Judgment or any subsequent Orders, until such time that the District instructs the Clerk to send any payments to consumers entitled to receive restitution under this Judgment or to transfer the funds to an account under the District’s control for the purpose of paying restitution to consumers (the “Restitution Account”). The initial restitution payment required by

this paragraph shall be paid by the Hofgards in accordance with the payment terms set forth in paragraph 38. The restitution payment required by this paragraph shall be in addition to the Three Hundred One Thousand, Five Hundred Dollars (\$301,500.00) that this Court ordered the Hofgards to pay into the Court's registry on March 22, 2016.

23. If, at any stage of the claims procedure set forth herein, it is determined that the amounts deposited into the Court's registry or the Restitution Account will require additional funds to satisfy the Restitution Amount due under this Judgment, the Hofgards shall deposit the additional funds within forty-five (45) days of being notified by the District of the need for and amount of the additional payment.

24. Consumers are entitled to receive restitution under this Judgment if they:

- (i) purchased a residential property located in the District of Columbia from the Hofgards; and
- (ii) the residential property has been, is currently, or within three (3) years from the date of the entry of this Judgment, is the subject of a Notice of Infraction issued by DCRA that concerns a violation of the Construction Codes or a zoning issue that existed at the time the property was first sold to the consumer by the Hofgards.

25. Within thirty (30) days of the entry of this Judgment, the Hofgards shall provide the District a list of all consumers to whom they have sold any residential real-estate in the District of Columbia (the "Consumer List"). For each such consumer whose name is contained on the Consumer List, the Hofgards shall provide the following information:

- a. the consumer's name;
- b. the street address of the property purchased from the Hofgards;
- c. the city, state and zip code;
- d. the date of purchase; and

- e. the purchase price of the property.

For a period of three (3) years, the Hofgards shall maintain all of their records in their possession that document the information contained in the Consumer List, as well as all records concerning their purchase, renovation and offer and sale of the properties contained in the Consumer List.

26. Following its receipt of the Consumer List required by paragraph 25, the District shall determine the Diminished Value. The District may determine the Diminished Value by, among other things:

- a. inspecting the properties, with the assistance of DCRA or other relevant District agencies;
- b. reviewing Notices of Infractions or other inspection records created or maintained by DCRA;
- c. reviewing sales documents provided by the Hofgards or consumers;
- d. reviewing comparable properties, for both properties in the condition represented by the Hofgards at the time of the sale and in the actual condition of the sold properties;
- e. assessing the costs to bring properties into compliance with any violations of the Construction Codes, zoning laws and/or housing regulations of the District; and
- f. reviewing and analyzing other records supplied by the Parties or consumers.

27. The Hofgards shall provide the District reasonable access to their business records throughout the claims procedure.

28. After the District has determined the Diminished Value for any individual property on the Consumer List, the District shall notify the Hofgards of that amount in writing. The Hofgards shall have thirty (30) days to either (i) accept the Diminished Value as the Restitution Amount for that individual property or (ii) obtain and forward to the District three bids from contractors mutually approved and agreed upon by the Parties for purposes of calculating the Repair Value as the proposed Restitution Amount for the individual property.

29. The District, within fifteen (15) days of receiving the three bids for a covered property from the Hofgards, shall determine whether it will accept either the Diminished Value calculation or the Repair Value calculation as the Restitution Amount that should be paid in connection with that property (the “Individual Restitution Amount”), consistent with paragraph 21 of this Judgment. In so doing, the District shall be responsible, in the first instance, for determining whether the bids submitted by the Hofgards address all violations of the Construction Codes or zoning laws or regulations, or any condition of the property that was otherwise misrepresented by the Hofgards.

30. After calculating any Individual Restitution Amount required by this Judgment, the District shall transmit, in writing, its calculation of the Individual Restitution Amount to the Hofgards, the address of the home to which each transmitted Individual Restitution Amount attaches, and the identity of each of the consumers who may be entitled to receive the Individual Restitution Amount.

31. Within thirty (30) days of their receipt of any written notice under paragraph 30 identifying any Individual Restitution Amounts consumers are entitled to receive under this Judgment, the Hofgards may, by motion to this Court, seek expedited review of any Individual Restitution Amount calculated by the District. If no such review is timely requested by the

Hofgards as to an Individual Restitution Amount, the District may arrange for the payment of that Individual Restitution Amount to the named consumer(s) pursuant to this Judgment.

32. Upon motion of the Hofgards for review of any Individual Restitution Amount, the Court shall review and either approve, reduce or increase any challenged Individual Restitution Amount pursuant to the terms of this Judgment.

33. The Court shall review a calculated Individual Restitution Amount to determine whether it is clearly erroneous. Any decision rendered pursuant to this paragraph shall be final and binding on the Parties. The Court may resolve claims on the papers submitted by the Parties or in a hearing. In any proceeding pursuant to this paragraph, the rules of evidence shall be relaxed and the rules of Civil Procedure of the Superior Court need not apply; provided however, *ex parte* communication with the Court will not be allowed other than to respond to any request for additional information. At its election, the Court may appoint a Senior Status Judge of this Court to serve as a Special Master to conduct the review required pursuant to this paragraph.

34. If the funds in the Restitution Account are insufficient to provide full restitution to each consumer entitled to restitution under this Judgment, available restitution funds shall be distributed to consumers on a *pro rata* basis.

35. The District shall apply any amounts it receives or collects pursuant to this Judgment first to satisfy consumers' restitution claims.

36. The District agrees that the amount of any payment for damages that the Hofgards make or have made to any consumer shall be applied to reduce the Individual Restitution Amount owed to that consumer. The District further acknowledges that any payment of an Individual Restitution Amount to a consumer hereunder may be offered as a set-off against any damages claim made by that consumer.

37. The Hofgards shall pay to the District the sum of Three Hundred Thousand Dollars (\$300,000.00) for costs the District has incurred investigating and litigating this action, or that may be incurred by the Office of Attorney General in paying restitution to consumers. The costs payment required by this paragraph shall be paid by the Hofgards in accordance with the payment terms set forth in paragraph 38.

38. The Hofgards shall pay the District the initial restitution payment required by paragraph 22 and the costs payment required by paragraph 37 as follows:

- a. Within seven (7) days of the date of entry of this Judgment, the Hofgards shall make a payment to the District in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00).
- b. Within sixty (60) days of the date of entry of this Judgment, the Hofgards shall make a payment to the District in the amount of Three Hundred Thousand Dollars (\$300,000.00).
- c. Within one hundred twenty (120) days of the date of entry of this Judgment, the Hofgards shall make a payment to the District in the amount of Three Hundred Thousand Dollars (\$300,000.00).
- d. Within one hundred eighty (180) days of the date of entry of this Judgment, the Hofgards shall make a payment to the District in the amount of Three Hundred Thousand Dollars (\$300,000.00).
- e. On the one year anniversary date of this Judgment, the Hofgards shall make a payment to the District in the amount of One Hundred and Fifty Thousand Dollars (\$150,000.00), provided that, however, if on the date this payment is due the Hofgards have fully complied with the requirements of this Judgment,

including having timely made all payments that are due and owing hereunder, then the District shall waive the remaining One Hundred and Fifty Thousand Dollar (\$150,000.00) balance due under this paragraph.

The payments required under this paragraph shall be made payable to either the District or the Clerk of the Superior Court, consistent with any instructions provided by the District. The Clerk of the Superior Court is hereby authorized to accept the payments required by this paragraph, as well as any subsequent restitution payments made by the Hofgards pursuant to paragraph 22.

39. If the Hofgards fail to make any payment due within thirty (30) days of the date such payment is due under the terms of this Judgment, or either of the Hofgards make an assignment for the benefit of their creditors, file or have filed against them any proceedings under any reorganization, bankruptcy act or similar law, are adjudicated bankrupt, or become insolvent, then the full amount of all payments shall become immediately due and payable.

VII. OTHER TERMS

40. All notices under this Judgment shall be provided to the following addresses via Electronic and/or Overnight Mail, unless a different address is specified in writing by the party changing such address:

For Plaintiff the District of Columbia:

Jimmy R. Rock, Esq.
Deputy Director, Office of Consumer Protection
Office of the District of Columbia Attorney General
441 Fourth Street, N.W., Suite 600 South
Washington, D.C. 20001
jimmy.rock@dc.gov

For Defendants Insun and Jefferson Hofgard:

Lloyd J. Jordan, Esq.
Motley Waller LLP
1155 F Street NW
Suite 1050
Washington, DC 20004
lloyd.jordan@motleywaller.com

41. The Hofgards understand that this Judgment is enforceable by the Office of Consumer Protection of the Office of the Attorney General for the District of Columbia, and agree that any violation of this Judgment shall be considered an unlawful practice that violates the CPPA and subjects the Hofgards to the legal and equitable remedies provided therein.

42. Nothing in this Judgment shall be construed so as to waive or release any claims that consumers have against the Hofgards under the CPPA, or otherwise. However, by agreeing to this Judgment the Hofgards are not waiving any right they might have to assert a claim for a set-off based on amounts they pay in restitution under this Judgment.

43. Upon entry of this Judgment, the preliminary injunction entered on August 25, 2015 shall be dissolved.

44. This Court retains jurisdiction to enforce or modify the terms of this Judgment as necessary.

WHEREFORE, it is this 6th day of June, 2016, hereby:

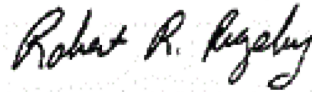
ORDERED, that the terms of this Order and Judgment set forth above are incorporated as if fully set forth herein; and it is further,

ORDERED, that Defendants Insun and Jefferson Hofgard shall make all monetary payments in accordance with the terms set forth herein; and it is further,

ORDERED, that the Clerk of the Superior Court is hereby authorized to accept the

restitution payment required by this Order and Judgment and to disburse amounts in accordance with the requirements of this Order and Judgment.

SO ORDERED AND ADJUDGED.



Judge Robert R. Rigsby
Superior Court Judge

FOR THE DISTRICT OF COLUMBIA:

KARL A. RACINE
Attorney General for the District of Columbia



PHILIP ZIPERMAN
Director, Office of Consumer Protection



JIMMY ROCK [493521]
Deputy Director, Office of Consumer Protection
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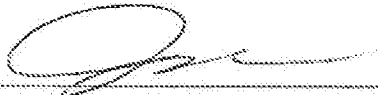
RICHARD V. RODRIGUEZ [1014925]
Assistant Attorneys General
441 Fourth Street, N.W., Suite 600 South
Washington, D.C. 20001

Attorneys for the District of Columbia

Dated: June 3, 2016

* Practicing in the District of Columbia pursuant to Ct. App. R. 49(c).

FOR DEFENDANTS INSUN AND JEFFERSON HOFGARD:



Insun Hofgard



Jefferson Hofgard



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Attorney for Defendants Insun and Jefferson Hofgard

Dated: 6/3/16