

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

DISTRICT OF COLUMBIA,

Plaintiff,

v.

**XQUISITE BASEMENTS & KITCHENS,
INC., *et al.***

Defendants.

Civil Action No: 2018 CA 003930 B

JUDGMENT AND INJUNCTIVE ORDER

This case concerns the deceptive offer and sale of home improvement services by Defendant Xquisite Basements & Kitchens, Inc. (“Xquisite”) and its sole owner, officer, and employee, Defendant Newton Gaynor (“Gaynor”) (collectively, “Defendants”). On June 1, 2018, the Plaintiff District of Columbia filed its Complaint for Permanent Injunction and Other Equitable Relief in this matter alleging that Defendants (1) made deceptive statements and material omissions in violation of the Consumer Protection Procedures Act (“CPPA”), D.C. Code § 28-3901, *et seq.*, when offering home improvement services; (2) conducted construction work that violated the District’s Construction Codes, D.C. Code § 6-1400, *et seq.*, and 12 DCMR Title 12; and (3) failed to pay employees’ wages, in violation of the District’s Wage Theft Amendment Act, D.C. Code § 32-1306, *et seq.*¹

On October 5, 2018, this Court entered a Default against Defendant Xquisite. On October 18, 2018 this Court granted the District’s Motion for Entry of Default against Defendant Gaynor.

¹ The District filed an Amended Complaint which was accepted and entered by this Court on July 20, 2018.

Because the Defendants failed to answer the Complaint, they are prevented from presenting any defenses to their liability for the District's claims and, accordingly, there are no issues remaining as to the liability of Defendants.²

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Court incorporates the Facts and Evidence Supporting Entry of Final Judgment in the District's Brief Regarding Remedies and Pre-Hearing Statement, including its attached Declarations and Affidavits from District consumers and wage claimants.
3. Based on the record and Defendants' past conduct, the Court finds there is some cognizable danger that Defendants will violate the CPPA in the future through the offer and sale of goods and services to District consumers.
4. Based on the Declarations from consumers, Defendants received a total amount of **\$152,162.81** from six (6) District of Columbia consumers for home improvement services which were not provided or were provided incorrectly, and their faulty home improvement services caused **\$25,861.54** in economic loss damage.
5. Based on the Affidavits from Defendants' former employees, Defendants owe back wages unlawfully withheld of a total amount of **\$3,852.40** to three (3) employees who provided labor to Defendants related to their home improvement services business.
6. The Attorney General, acting in the public interest, is authorized to enforce violations of

² “[T]he entry of a default operates as an admission by the defaulting party that there are no issues of liability, leaving only damages to be determined.” See *Luna v. A.E. Engineering Services, LLC*, 938 A.2d 744, 750 (D.C. 2007) (quotations omitted); see also *Lockhart v. Cade*, 728 A.2d 65, 68 (D.C. 1999) (“the entry of a default ‘operates as an admission by the defaulting party that there are no issues of liability, but leaves the issue of damages unresolved until entry of judgment.’”) (quoting 46 AM.JUR.2D Judgments § 266, at 579 (1994)).

the Wage Theft Amendment Act, and upon prevailing in court, is entitled to collect the “payment of back wages unlawfully withheld” and “[a]dditional liquidated damages equal to treble the back wages unlawfully withheld” on behalf of aggrieved employees. D.C. Code § 32-1306(2)(A). Based on the Affidavits from Defendants’ employees, the liquidated damages in this case, equal to treble the back wages unlawfully withheld, amounts to a total amount of **\$11,557.20**.

7. Based on these findings of facts and conclusions of law, the Court finds that permanent injunctive relief, restitution, civil penalties, and payment of costs are appropriate as authorized under § 28-3909 of the CPPA.

I.

APPLICATION

A. The provisions of this Judgment and Order shall apply to Defendant Xquisite Basements & Kitchens, Inc. (“Xquisite”) and its officers, employees, agents, successors, assignees, affiliates, merged or acquired entities, parent or controlling entities, wholly-owned subsidiaries, and all other persons acting in concert with Xquisite now and in the future.

B. The provisions of this Judgment and Order shall apply to Defendant Newton Gaynor (“Gaynor”), and his agents, employees and assigns, and any partnership, corporation or entity in which he, currently or in the future, has an ownership interest, has authority to control, or has the authority to establish policy.

C. The provisions of this Judgment and Order shall apply to Defendants in connection with their offer and/or sale of any goods or services in the District of Columbia.

II.
INJUNCTION

IT IS FURTHER ORDERED that:

- A. The Defendants shall cease and desist from committing any unfair or deceptive trade practices that violate the CPPA.
- B. Defendants shall not make any misrepresentations concerning a material fact that has a tendency to mislead any consumers. D.C. Code § 28-3904(e).
- C. Defendants shall not omit material facts that the omission of which has a tendency to mislead any consumers. D.C. Code § 28-3904(f).
- D. Defendants shall not violate any provision of title 16 of the District of Columbia Municipal Regulations. D.C. Code § 28-3904(dd).
- E. Defendants shall not advertise or offer any goods or services in the District of Columbia, unless they are able and have the intent to sell them as advertised or offered. D.C. Code § 28-3904(h).
- F. Defendants shall not collect payment from any District consumers for goods or services unless they are able to provide such goods or services.
- G. Defendants shall not provide any home improvement services to District consumers for a period of ten (10) years from the entry of this Judgment and Order.
- H. If due to changed circumstances, or any change in existing laws, Defendants are unable to comply with any of the specific prohibitions or affirmative obligations that are imposed by the injunctive terms of this Judgment and Order, any party may petition the Court to amend this Judgment and Order.

III.
MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Within thirty (30) days of the entry of this Judgment and Order, Defendants shall pay the District of Columbia a restitution amount equal to the total of all amounts Defendants received from consumers in connection with their offer and sale of home improvement services, plus any economic damages—which includes actual damages Defendants caused to consumer properties and costs faced by consumers to finish or repair Defendants' incorrect work, which amount shall be no less than **\$178,024.35**, which reflects the restitution and economic damages amount due to consumers identified by the District.

B. The District of Columbia shall use all amounts collected as restitution under this Judgment and Order to pay restitution to the consumers who have been harmed by the Defendants' unlawful practices. The District shall distribute this restitution in an amount equal to the payments each consumer paid the Defendants, less any amount that the Defendants have already refunded to the consumer, except that any restitution may be distributed *pro rata* to consumers if Defendants fail to pay all restitution due under this Judgment and Order. The District shall hold any unpaid restitution amounts either as an unclaimed fund for the consumer or it shall use the funds for any other lawful purpose designated by the Attorney General.

C. Within thirty (30) days of the entry of this Judgment and Order, Defendants shall pay the District of Columbia a damages amount equal to the total of all back wages withheld plus liquidated damages equal to treble the back wages unlawfully withheld, in the amount of **\$15,409.60**.

D. The District of Columbia shall use all amounts collected as damages relating to back wages under this Judgment and Order to pay back wages withheld to the employees who have been harmed by the Defendants' unlawful practices.

E. Defendants shall pay to the District the sum of **\$30,000.00** as a civil penalty pursuant to D.C. Code §28-3909(b).

F. Defendants shall pay to the District the sum of **\$1,300.00** as a civil penalty pursuant to D.C. Code §32-1307(b)(1).

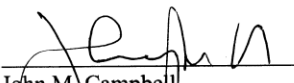
G. Judgment be and hereby is entered against Defendants Xquisite Basements & Kitchens, Inc., and Newton Gaynor, jointly and severally, in the amount of **\$224,733.95**.

IV.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED THIS 24th day of April, 2019.



John M. Campbell
Associate Judge
Superior Court of the District of Columbia