

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

OFFICE OF THE ATTORNEY GENERAL,
DEPARTMENT OF LEGAL AFFAIRS,
STATE OF FLORIDA,

Plaintiff,

v.

Case No.

COUNTER TOPS & CABINETS DIRECT, INC.,
a Florida Corporation, WILLIAM P.
DEESE, and HAROLD BERNSTEIN a/k/a
HAROLD BERSTEIN, individuals.

Defendants.

_____ /

**COMPLAINT FOR INJUNCTION, RESTITUTION,
CIVIL PENALTIES, AND OTHER RELIEF**

Plaintiff, OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL
AFFAIRS, STATE OF FLORIDA, (hereinafter referred to as the “Attorney General”) sues
Defendants COUNTER TOPS & CABINETS DIRECT, INC., WILLIAM P. DEESE, and
HAROLD BERNSTEIN a/k/a HAROLD BERSTEIN, and states as follows:

JURISDICTION AND VENUE

1. This is an action for Injunctive Relief, Restitution, Civil Penalties and Other Relief
against Defendants COUNTER TOPS & CABINETS DIRECT, INC., WILLIAM P. DEESE,
and HAROLD BERNSTEIN a/k/a HAROLD BERSTEIN, pursuant to the Florida Deceptive and
Unfair Trade Practices Act (“FDUTPA”), Chapter 501, Part II, Fla. Stat. (2004).

2. This Court has jurisdiction over the subject matter of this action pursuant to the

provisions of FDUTPA.

3. The award of injunctive relief and other equitable relief is within the jurisdiction of the Circuit Court and the amounts in controversy meet the jurisdictional threshold of the Circuit Court.

4. The State Attorney for Palm Beach County, Florida, has deferred to the Attorney General in writing. A copy of the deferral letter is attached hereto as Exhibit "A." The vast majority of adversely affected consumers reside in Palm Beach County, Florida, but at least one adversely affected consumer resides in a different Florida county.

5. Venue is proper in Palm Beach County Florida. All of the Defendants reside in Palm Beach County, and the cause of action also accrued there.

6. Pursuant to Section 501.207(2), Fla. Stat. (2004), the Attorney General has conducted an investigation and has determined that enforcement action serves the public interest. A copy of that determination is attached and incorporated herein, as Exhibit "B."

THE PARTIES

7. The Attorney General is the enforcing authority of FDUTPA, and is authorized to seek injunctive and other statutory and civil relief pursuant to the provisions of §§ 501.207 & 501.2075, Fla. Stat. (2004).

8. Defendant COUNTER TOPS & CABINETS DIRECT, INC., (hereinafter, "COUNTERTOPS & CABINETS") is a for profit Florida corporation headquartered in Palm Beach County, Florida. At all pertinent times, they were registered with the Secretary of State as being headquartered at 2172 Jog Road, Green Acres, FL 33415.

9. Defendant WILLIAM P. DEESE (hereinafter, "DEESE") is an individual, residing in

Palm Beach County, Florida. He currently resides at either 36 Valencia Drive, Boynton Beach, FL 33436 or 104 Rosemount Court, Atlantis, FL 33462. At all pertinent times, and currently, he is and was the President of COUNTERTOPS & CABINETS. At all pertinent times, and currently, he owned, managed or controlled COUNTERTOPS & CABINETS, together with HAROLD BERNSTEIN, and was a signatory on their bank accounts.

10. Defendant HAROLD BERNSTEIN A/K/A HAROLD BERSTEIN (hereinafter, “BERNSTEIN”) is an individual, residing in Palm Beach County, Florida at 11700 Sanderling Drive, Wellington, Florida, 33414. At all pertinent times, and currently, he is and was the Secretary and Treasurer of COUNTERTOPS & CABINETS. At all pertinent times, and currently, he owned, managed or controlled COUNTERTOPS & CABINETS, together with DEESE, and was a signatory on their bank accounts.

GENERAL ALLEGATIONS

11. This case concerns unfair and deceptive trade practices by Defendants, COUNTERTOPS & CABINETS, DEESE, and BERNSTEIN, during the “pertinent period” 2005.

12. Defendants’ business was, at all pertinent times, the retail sale of Countertops & Cabinets (principally for residential kitchens and bathrooms), and also, the installation of the same, which was accomplished through independent contractors.

13. When making a sale to a consumer, Defendants would routinely accept 50-75% down payment. They would also collect additional amounts for the payment of the independent contractors who would install such countertops and cabinets.

14. A copy of a typical work order or proposal, which itemizes receipt of a consumer’s

down payment, is attached hereto, as Exhibit “C.”

15. When COUNTERTOPS & CABINETS made any sale to consumers, the consumer was typically reassured, at least orally, that their countertops and cabinets would be installed within a specified time frame or range of time. Typically, the consumer was assured that installation would be accomplished within 6-8 weeks from the date of their tendering down payment.

16. For a while, Defendants were able to deliver countertops and cabinets. However, by the middle of 2005, Defendants were unable to deliver as promised, because their credit with suppliers had been cut-off.

17. Defendants responded to consumer complaints by “stalling” consumers, neither delivering product nor making refunds. On repeated occasions, they failed to deliver cabinets and countertops, for which deposits had already been accepted. As of the date that the Complaint is being filed, some consumers, who have paid their deposits, have now been waiting 7 months or more beyond their promised installation date for delivery of their countertops or cabinets.

18. Defendants are not in the process of delivering on their promises or of making consumer refunds, concerning many consumers.

19. Defendants continued to accept deposits from new customers after they knew that they were unable to perform as promised on prior consumer orders, for which deposits had already been received.

20. As new deposits were accepted, Defendants, DEESE and BERNSTEIN, then began personally cashing consumer deposit checks at a check cashing store.

21. While this took place, Defendant DEESE bought a new house and Defendant

BERNSTEIN purchased a Bentley automobile, using consumer deposit funds, in whole or in part, to accomplish such purchases.

22. As of the date that this lawsuit is being filed, approximately 60 adversely affected consumers have signed affidavits complaining about the Defendants' unfair and deceptive trade practices, as described herein. Most of these consumers paid 50-75% down but never received any cabinetry at all, while a smaller minority of these consumers received partial performance.

23. Defendants DEESE and BERNSTEIN, at all times material hereto controlled, directed, formulated, knew, participated in, had authority to control, and approved of the various unfair and deceptive acts and practices of COUNTERTOPS & CABINETS which are outlined above and later herein.

24. Defendants, COUNTERTOPS & CABINETS, DEESE and BERNSTEIN willfully violated the provisions of Chapter 501, Part II, Florida Statutes in that they knew or should have known that the various practices, outlined above, were unfair and deceptive.

WHEREFORE, the Plaintiff prays for the entry of the following orders:

A. Temporary and permanent injunctions prohibiting COUNTERTOPS & CABINETS, DEESE and BERNSTEIN and their officers, agents, servants, and employees, and those persons in active concert or participation with them who receive actual notice of the Court's orders, from engaging in any activity within the State of Florida, or, where the customer is a Florida business or resident, from outside the State of Florida, to the extent that those activities involve:

- (i) countertops or cabinets;
- (ii) home improvement, or;
- (iii) the acceptance of advance deposits.

B. Alternatively, temporary and permanent injunctions prohibiting Defendants, COUNTERTOPS & CABINETS, DEESE and BERNSTEIN from billing, charging, or collecting a deposit for any service unless and until all promised services are fully and completely performed;

C. Full restitution for all affected consumers, and any injunctive relief associated therewith;

D. In the case of affected consumers who are not “senior citizens,” the award of penalties in the amount of \$10,000 per violation, as provided by Section 501.2075, Florida Statutes.;

E. In the case of affected consumers who are “senior citizens,” the award of penalties in the amount of \$15,000 per violation, as provided by Section 501.2077, Fla. Stat.

F. The award of reasonable attorney’s fees, as provided by Section 501.2105, Florida Statutes.;

G. Costs.; and

H. Such other and further relief as may be just and equitable.

Respectfully submitted,

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

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