

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN LEE COUNTY, FLORIDA
- CIVIL DIVISION -**

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

Plaintiff,

CASE NO:

v.

**FOSTERS AIR SUPPLIES & TECHNICAL
SERVICES INC. D/B/A FAST AC SWFL,**
a Florida Corporation, and
MATTHEW MICHAEL FOSTER,
an Individual,

Defendants.

_____ /

COMPLAINT

Plaintiff, Office of the Attorney General, State of Florida, Department of Legal Affairs (“Attorney General” or “Plaintiff”), sues Defendants, Fosters Air Supplies & Technical Services, Inc., d/b/a FAST AC SWFL (“FastAC”), a Florida corporation, and Matthew Michael Foster (“Foster”), an individual (collectively “Defendants”), and respectfully alleges the following:

JURISDICTION AND VENUE

1. This is an action pursuant to the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (“FDUTPA”). The action seeks

statutory relief, including civil penalties, injunctive relief, and attorneys' fees, pursuant to FDUTPA.

2. This Court has subject matter jurisdiction pursuant to the provisions of Chapter 501, Part II, Florida Statutes. The Attorney General seeks relief in an amount greater than Thirty Thousand Dollars (\$30,000), exclusive of fees and costs.

3. The statutory violations alleged in this Complaint occurred in, and/or affect, more than one judicial circuit, including Lee County, Florida.

4. Venue is proper in the Twentieth (20th) Judicial Circuit, as Defendants conduct business in Lee County.

5. The Attorney General has conducted an investigation into the matters alleged herein, and the head of the enforcing authority has determined that this enforcement action serves the public interest, as required by Section 501.207(2), Florida Statutes.

6. All conditions precedent to this action have been performed or have occurred within four (4) years of the filing of this action.

PARTIES

7. The Attorney General is an enforcing authority of Chapter 501, Part II, Florida Statutes, and is authorized to bring this action and to seek injunctive and other statutory relief, including restitution and civil penalties, pursuant to FDUTPA.

8. Fosters Air Supplies & Technical Services, Inc. is an inactive Florida

corporation with its principal place of business located at 4400 Cleveland Avenue, Fort Myers, FL 33901, which is in Lee County.

9. Fast AC SWFL is a fictitious name registered by Fosters Air Supplies & Technical Services, Inc.

10. FastAC conducts business under and through certified air conditioning contractor license numbers CAC1818724 and CAC1819938 issued by the Florida Department of Business and Professional Regulation to Foster.

11. FastAC also uses Florida Department of Agriculture & Consumer Services' phone sales license number TC5140.

12. At all times material hereto, Foster has been the owner, manager, registered agent, officer and/or director of FastAC.

13. Upon information and belief, Foster resides in Collier County, Florida.

FACTS RELEVANT TO COMPLAINT

14. FastAC is an air conditioning company that offers consumers heating, ventilation and air conditioning ("HVAC") services, including installation, sales and repair.

15. FastAC actively engages in advertising its services through direct mail and telemarketing.

16. The negotiations and ultimate consummation of the FastAC service contracts occur within the consumers' residences. At all times material hereto,

Defendants engaged in “trade or commerce” as defined in Section 501.203(8), Florida Statutes. Defendants engaged in the business of air conditioning sales, repair, and maintenance services throughout the state of Florida.

17. In 2018, the Attorney General, after receiving numerous consumer complaints alleging unfair and deceptive business practices and financial exploitation, opened an investigation into the business practices of Defendants.

18. The Attorney General and the Better Business Bureau have received over thirty (30) consumer complaints, which can be traced to Defendants. Approximately twenty (20) of these complaints were filed by senior citizens.

19. According to several consumer complaints, Defendants misled consumers to believe that their HVAC system required new, expensive parts and work, when in fact, only minor, less expensive repairs were needed. The unneeded work aggressively sold by Defendants include, but is not limited to, new duct work, germicidal systems and/or an entirely new HVAC system. For example,

- According to one consumer, his 86-year-old mother, who suffers from Alzheimer’s, was sold an unneeded UV germicidal light system for \$2,407.50, even though the consumer has had an active HVAC maintenance agreement with another company. Despite the family’s requests for FastAC not to return to the property as they have a power of attorney for the consumer, FastAC technicians returned and unnecessarily replaced the HVAC systems’ duct work that did not need replacement, charging her an additional \$2,550. The consumer’s family again advised FastAC not to return, yet a few months later, they returned and charged her \$878 for an alleged faulty capacitor and freon.

- Another consumer, an 88-year-old dementia sufferer, who was under the supervision of several caretakers, was contacted by FastAC via phone offering an appointment to service her HVAC system, which was working well at the time. Despite cancelling the appointment, FastAC still went to the property, while her caretaker was away, and convinced the consumer that the coil was broken and that it was more cost effective to replace the entire HVAC system for \$9,198. When the caregiver arrived, the HVAC had already been dismantled despite FastAC not having a permit to legally perform the work and still being within the cancellation period. The consumer's daughter believing that she had no other options for her mother, agreed to have FastAC install an HVAC system "at-cost" for \$4,910. The daughter also contacted her mother's regular HVAC system's servicing company, which inspected the work and advised that the new HVAC system's installation was not done properly and needed to be reinstalled to function well and prevent leaks. Importantly, the company that regularly serviced the home advised that the alleged broken coil was under warranty and only cost between \$600 to \$800, thus a new HVAC system had been totally unnecessary. The consumer's daughter sent FastAC a check for \$2,500 to settle the matter, but the company did not accept and instead filed a lien on the property which has not been released.
- In another instance, a 90-year-old man with cognitive impairment was pressured by FastAC technicians into agreeing to some work for his HVAC system and even signed him up for financing without his recollection. When his daughter later that evening sent a message to FastAC via its website cancelling all work, Foster would not allow it and threatened to place a lien on the home.

20. These complaints referenced in paragraph 19 above, along with other consumer complaints, demonstrate a pattern of targeting seniors, which led many of the senior consumers' children to seek protection for their parents who were being victimized.

21. Additionally, several consumers state in their complaints that FastAC, during routine HVAC system inspections, made false claims of major growth of

micro-organisms and/or mold in the consumers' HVAC systems, and recommended pricey UV light germicidal systems. When the consumers declined and called other AC companies for a second opinion, they were informed that there was no growth of micro-organisms in their air duct system.

22. FastAC made other false claims to consumers, such as leaks in HVAC systems that were non-existent and selling unnecessary freon. The consumers called other companies to verify FastAC's assertions and found that no leaks were present in their HVAC systems, and in some cases, that no actual work was performed by FastAC to support its charges.

23. Consumers complain of poor workmanship requiring numerous return trips by FastAC for corrective action, such corrective action sometimes resulting in damage to their properties that FastAC has refused to reimburse.

24. Consumer complaints also demonstrate a pattern of excessive pricing compared to other companies in the area during the aftermath of Hurricane Irma, which hit Florida the morning of September 10, 2017. One particular family had to get legal representation to challenge a lien on their property placed by FastAC, despite FastAC not completing the ductwork that they were hired to do.

25. Other complaints against FastAC include not honoring the three-day cancellation per the Rule 2-18.002 of the Florida Administrative Code, and instead immediately starting work without obtaining the required permits.

26. The investigation also revealed that FastAC representatives, who went to consumers' homes to sell Defendants' services, did not hold valid home solicitation permits as required by Section 501.022, Florida Statutes.

FACTS RELATED TO DEFENDANT FOSTER

27. At all times relevant hereto, Foster directly participated in, managed, operated, and controlled operations for FastAC.

28. At all times relevant hereto, Foster personally serviced HVAC systems for consumers.

29. At all times relevant hereto, FastAC's website www.fastacswfl.com advertised that Foster took hands-on responsibility for the company by being a licensed air conditioner technician, as well as, its owner.

30. At all times relevant hereto, Foster personally solicited business from consumers.

31. At all times relevant hereto, Foster personally signed applications for construction permits such as county permits and inspection documents.

32. At all times relevant hereto, Foster personally sent text messages demanding payment from consumers.

33. At all times relevant hereto, Foster personally instructed his employees not to respond to certain customers.

34. At all times relevant hereto, Foster personally signed liens filed on

consumers' homes with the county for alleged non-payment of services rendered.

35. At all times relevant hereto, Foster personally replied to consumer complaints involving payments and poor workmanship.

THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

36. Section 501.204(1), Florida Statutes provides states that unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

37. Section 501.203(8), Florida Statutes, defines "trade or commerce" as:

the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. "Trade or commerce" shall include the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity.

38. The provisions of FDUTPA shall be "construed liberally" to promote and "protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." Fla. Stat. § 501.202.

39. A person that willfully engages in a deceptive or unfair act or practice is liable for a civil penalty of Ten Thousand Dollars (\$10,000) for each such violation, pursuant to Section 501.2075, Florida Statutes, and Fifteen Thousand

Dollars (\$15,000) for each violation victimizing a senior citizen, pursuant to Section 501.2077, Florida Statutes. Willful violations occur when the person knew or should have known that the conduct in question was deceptive or unfair or prohibited by rule, pursuant to Section 501.2075, Florida Statutes.

COUNT I
Against FastAC - MISREPRESENTATIONS TO CONSUMERS
(Violation of Chapter 501, Part II, Florida Statutes)

40. Plaintiff adopts, incorporates herein, and re-alleges paragraphs 1 through 39, as if fully set forth hereinafter and further alleges:

41. FastAC has engaged in a pattern of acts and practices designed to deceive and coerce consumers, through lies, high-pressure sales tactics, and outright intimidation, to purchase Defendants' products, or even new HVAC systems were not needed.

42. Through false and deceptive marketing and related business practices, Defendants have (1) committed acts or practices in trade or commerce, which shock the conscience; (2) engaged in representations, acts, practices or omissions, which are material, and which are likely to mislead consumers acting reasonably under the circumstances; (3) committed acts or practices in trade or commerce which offend established public policy and are unethical, oppressive, unscrupulous or substantially injurious to consumers; and/or (4) engaged in acts or practices that are likely to cause substantial injury to consumers, which is not reasonably avoidable by

consumers themselves or outweighed by countervailing benefits to consumers or competition. Thus, Defendants have engaged in unfair or deceptive acts or practices in the conduct of any trade or commerce in violation of Section 501.204(1), Florida Statutes.

43. Defendants are subject to civil penalties for willful violations of FDUTPA in the amount of Ten Thousand Dollars (\$10,000) for each violation pursuant to Section 501.2075, Florida Statutes, and Fifteen Thousand Dollars (\$15,000) for each violation that victimized or attempted to victimize a senior citizen pursuant to Section 501.2077, Florida Statutes.

44. These above-described acts and practices of Defendants have injured and will likely continue to injure and prejudice the public.

45. Defendants have willfully engaged in the acts and practices when they knew or should have known that such acts and practices were unfair or deceptive or otherwise prohibited by law.

46. Unless FastAC is permanently enjoined from engaging further in the acts and practices complained of herein, Defendants' actions will result in irreparable injury to the public for which there is no adequate remedy at law.

COUNT II
Against Foster - MISREPRESENTATIONS TO CONSUMERS
(Violation of Chapter 501, Part II, Florida Statutes)

47. Plaintiff, adopts, incorporates and re-alleges paragraphs 1 through 39 as if fully set forth herein.

48. Under FDUTPA, once corporate liability is established, an individual defendant may be individually liable if he participated directly in the deceptive or unfair practices or acts, or he possessed the authority to control them.

49. During all times relevant to this action, Foster has been the owner and manager of FastAC and has controlled its operations.

50. Therefore, Foster either directly controlled, had the authority to control or was aware of the unfair and deceptive acts referenced above. Because Foster either directly controlled or has the authority to directly control and participate in the unfair and deceptive business practices of FastAC, he can be held individually liable under FDUTPA.

51. Through the actions and related business practices set forth in this Complaint, Foster is engaging in acts or practices that are likely to cause substantial injury to consumers. This substantial injury is not reasonably avoidable by the consumers themselves and is not outweighed by countervailing benefits to consumers or competition.

52. Thus, Foster is engaged in unfair or deceptive or unconscionable acts or practices in the conduct of any trade or commerce in violation of Section 501.204(1), Florida Statutes.

53. Foster should be subject to civil penalties for willful violations of FDUTPA in the amount of Ten Thousand Dollars (\$10,000) for each violation pursuant to Section 501.2075, Florida Statutes, and Fifteen Thousand Dollars (\$15,000) for each violation that victimized or attempted to victimize, a senior citizen pursuant to Section 501.2077, Florida Statutes.

54. Foster willfully engaged in and continues to engage in deceptive and unfair acts and practices in that he knew or should have known that the methods, acts or practices alleged herein were and are unfair, deceptive, unconscionable and prohibited by law.

55. Unless Foster is temporarily and permanently enjoined from engaging further in the acts and practices complained of herein, Foster's actions will continue to result in irreparable injury to the public for which there is no adequate remedy at law.

COUNT III
FAILURE TO OBTAIN HOME SOLICITATION PERMIT
(Violation of Chapter 501.022, Florida Statutes)

56. Plaintiff adopts, incorporates, and re-alleges paragraphs 1 through 26 and 36-39 as if fully set forth hereinafter and further alleges that Defendants have

engaged in a pattern of acts and practices designed to avoid the permitting requirements of Section 501.022, Florida Statutes.

57. Section 501.055(2), Florida Statutes, establishes “Any person who conducts or attempts to conduct a home solicitation sale without first obtaining and having in her or his possession a valid, current permit as required by § 501.022 ... is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. Upon second or subsequent conviction for violation of this subsection, the offender is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.”

58. Defendants have violated and continue to violate Section 501.022, Florida Statutes, by failing to obtain the required home solicitation permits.

59. Section 501.203(3)(c), Florida Statutes, states that a violation of Chapter 501, Part II, may be based on a violation of “[a]ny law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.”

60. As set forth above and in paragraphs 1 through 26 herein, Defendants violated the provisions of Section 501.022, Florida Statutes, and therefore have engaged in deceptive and unfair acts and practices in trade or commerce, in violation of FDUTPA, and are subject to civil penalties and equitable remedies as imposed therein.

61. Defendants willfully engaged in the acts and practices alleged herein.

62. These above-described acts and practices of Defendants have injured and will likely continue to injure and prejudice the public.

63. Unless Defendants are temporarily and permanently enjoined from engaging further in the acts and practices complained herein, the Defendants' actions will result in irreparable injury to the public for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Office of the Attorney General, State of Florida, Department of Legal Affairs, prays that the Court provide the following relief:

A. Award final judgment against Defendants, jointly and severally, ordering full restitution to Florida consumers harmed by Defendants' unfair and deceptive acts in violation of FDUTPA, disgorgement, repatriation of assets to satisfy any judgment, and any other appropriate relief pursuant to Section 501.207(3), Florida Statutes;

B. Assess against Defendants, jointly and severally, civil penalties in the amount of Ten Thousand Dollars (\$10,000) for each violation of FDUTPA in accordance with Section 501.2075, Florida Statutes, and Fifteen Thousand Dollars (\$15,000) for each violation that victimized or attempted to victimize a senior citizen in accordance with Section 501.277, Florida Statutes;

C. Permanently enjoin Defendants, its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them, who receive actual notice of the injunction, from engaging in the acts and practices in violation of provisions of FDUTPA as specifically alleged above and any similar acts and practices relating to the relaying of false or misleading statements to consumers;

D. Award the Attorney General reasonable attorney's fees and costs pursuant to the provisions of Section 501.2105, Florida Statutes, and as otherwise allowable by applicable statutes or law; and

E. Award such other and further relief as the Court deems just and proper, including all equitable relief allowed pursuant to Sections 501.207(3), Florida Statutes.

Dated this 1st day of October 2020.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL

/s/ *Marena S. Ramirez*

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