VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

COMMONWEALTH OF VIRGINIA, ***EX REL.* MARK R. HERRING,** **ATTORNEY GENERAL,** **Plaintiff,** **v.** **KELLY PATRICK JOHNSON,** **an individual, d/b/a Kelly Home Improvement,** **Defendant.**	) **CIVIL ACTION NO.** CL16-5155 -

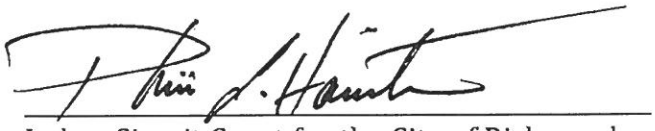
ORDER APPROVING AND ADOPTING ASSURANCE OF VOLUNTARY COMPLIANCE

Upon review of the Complaint and the Assurance of Voluntary Compliance (the "Assurance") entered into between Plaintiff Commonwealth of Virginia, *ex rel.* Mark R. Herring, Attorney General and Kelly Patrick Johnson, individually and doing business as Kelly Home Improvement, and with the consent of the parties, it is hereby ADJUDGED, ORDERED, and DECREED that:

1. The attached Assurance is hereby approved and adopted as an Order of this Court; and

2. The Clerk of this Court shall mail a certified copy of this Order to Stephen John Sovinsky, Assistant Attorney General, Consumer Protection Section, 202 North 9th Street, Richmond, Virginia 23219, and to Kelly Patrick Johnson, 1911 Miller Avenue, Apt. B, Richmond, Virginia 23222.

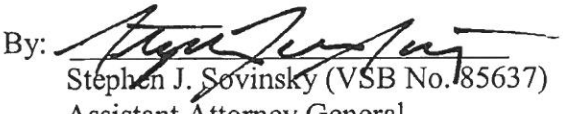
Enter: 11/29/2016



Judge, Circuit Court for the City of Richmond

WE ASK FOR THIS:

COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL

By: 

Stephen J. Sovinsky (VSB No. 85637)
Assistant Attorney General
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Counsel for Commonwealth of Virginia, ex rel. Mark R. Herring, Attorney General

KELLY PATRICK JOHNSON,
individually, and d/b/a Kelly Home Improvement

By: Kelly Patrick Johnson
Kelly Patrick Johnson

VIRGINIA:

RECEIVED AND FILED
CIRCUIT COURT
9:41 NOV 17 2016
EDWARD F. JEWETT, CLERK
BY _____ D.C.

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

COMMONWEALTH OF VIRGINIA, ***EX REL.* MARK R. HERRING,** **ATTORNEY GENERAL,** **Plaintiff,** **v.** **KELLY PATRICK JOHNSON,** **an individual, d/b/a Kelly Home Improvement,** **Defendant.**	) CIVIL ACTION NO. CL16-5155-1

ASSURANCE OF VOLUNTARY COMPLIANCE

I. PARTIES

1.0 This Assurance of Voluntary Compliance ("Assurance") is entered into by the Commonwealth of Virginia, by, through and at the relation of its Attorney General, Mark R. Herring (the "Attorney General" or the "Commonwealth"), and Kelly Patrick Johnson, individually and doing business as sole proprietorship under the name of Kelly Home Improvement ("Johnson").

1.1 Kelly Patrick Johnson is an individual who conducts business as a sole proprietorship under the name of Kelly Home Improvement. Johnson currently resides at 1911 Miller Avenue, Apt. B, Richmond, Virginia 23222. Kelly Home Improvement is not incorporated or otherwise registered with the Virginia State Corporation Commission, and is not licensed as a business or registered as a fictitious trade name in the City of Richmond.

1.2 By undertaking for money to bid upon, accepting, and offering to accept various

contracts for the construction, removal, repair, and improvement in consumers' homes, Johnson is a "contractor," as defined in Virginia Code § 54.1-1100, requiring a Virginia contractor's license under Virginia Code § 54.1-1103. Neither Kelly Patrick Johnson nor Kelly Home Improvement is licensed as a contractor by the Virginia Department of Professional and Occupational Regulation Board for Contractors.

1.3 Johnson does not contest that he has advertised to and served Virginia consumers including in the City of Richmond. Johnson consents to and waives all objections to this Court's jurisdiction for all matters relating to this Assurance's entry, execution, monitoring, and enforcement. Johnson further waives all objections he may have to venue in this Court for all matters relating to this Assurance's entry, execution, monitoring, and enforcement.

II. COMMONWEALTH'S POSITION

2.0 The statements contained in this Section II represent the position of the Attorney General.

2.1 The Commonwealth alleges that Johnson was at all relevant times mentioned herein, a "supplier" of "goods" or "services," and engaged in "consumer transactions," as those terms are defined in § 59.1-198 of the Virginia Consumer Protection Act ("VCPA"), Virginia Code §§ 59.1-196 through 59.1-207, by advertising, selling, and offering for sale services as a contractor to consumers residing in Virginia.

2.2 By undertaking for money to bid upon, accepting, and offering to accept various contracts for the construction, removal, repair, and improvement in consumers' homes, Johnson is a "contractor," as defined in Virginia Code § 54.1-1100, requiring a Virginia contractor's license under Virginia Code § 54.1-1103.

2.3 The Commonwealth contends that, from at least 2012 through 2015, Johnson operated in violation of Virginia Code § 54.1-1115(B)(i), by undertaking work without any valid Virginia

contractor's license or certificate when a license or certificate is required, in violation of § 59.1-200(A)(46).

2.4. The Commonwealth contends that Johnson also operated in violation of § 59.1-200(A)(2), (5), (8), (11), (14), and (17) of the VCPA by making various misrepresentations regarding the contractor services advertised, offered, and sold.

III. THE DEFENDANT'S POSITION

3.0 The statements contained in this Section III represent the position of Johnson.

3.1 Johnson does not contest the allegations contained in Sections 2.1 through 2.4 of this Assurance of Voluntary Compliance.

IV. GENERAL PROVISIONS

4.0 This Assurance is made without trial or adjudication of any issue of fact or law. This Assurance does not constitute evidence or admission of any issues of fact or law. Johnson enters into this Assurance for the purpose of arriving at a complete, full settlement of any disagreement as to the matters addressed in this Assurance and preceding its execution, which may exist between Johnson and the Attorney General, thereby avoiding unnecessary delay and expense.

4.1 This Assurance shall be governed by the laws of the Commonwealth of Virginia.

4.2 This Assurance does not constitute an approval by the Attorney General of any of Johnson's services or practices and Johnson shall not make any representation to the contrary.

4.3 Nothing in this Assurance shall be construed as a waiver of whatever, if any, private rights of action any affected person may have relating to the conduct at issue.

4.4 Nothing in this Assurance shall permit any person or entity not a signatory hereto to enforce any provision of this Assurance.

4.5 Nothing in this Assurance shall be construed to authorize or require any action by Johnson in violation of applicable federal, state, or other laws.

4.6 Johnson agrees that this Assurance constitutes a legally-enforceable obligation of Johnson in accordance with its terms.

4.7 With the exception of this action, the Commonwealth shall not institute any civil proceeding or take any civil action against Johnson under Virginia Code § 54.1-1115(B)(i) or the VCPA for any conduct that occurred prior to the date this Assurance is signed by all parties and approved and adopted as an Order of the Court (the "Effective Date" of this Assurance) that is based on any service or practice addressed in this Assurance. The Parties agree that if Johnson provided any materially-false information to the Commonwealth during any settlement negotiations between the Parties, this release shall be null and void.

4.8 This Assurance applies to Kelly Patrick Johnson and Kelly Home Improvement, together with any employees or agents of the business who engage in any aspect of Johnson's contractor activities.

4.9 This Assurance constitutes the entire agreement of the parties hereto and supersedes all prior agreements or understandings, whether written or oral, between the parties and/or their respective counsel with respect to the subject matter hereof. Any amendment or modification to this Assurance must be in writing and signed by a duly authorized representative of all the parties hereto and approved by the Court.

V. ASSURANCES

5.0 Johnson voluntarily agrees to this Assurance of Voluntary Compliance without trial or adjudication of any issue of fact or law.

5.1 Johnson agrees to refrain from and to be permanently enjoined from violating Virginia Code § 54.1-1115(B)(i) and § 59.1-200(A)(2), (5), (8), (11), (14), (17), and (46) of the VCPA, including by making any misrepresentations regarding contractor services advertised, offered, and sold, and undertaking work without a valid Virginia contractor's license. Johnson further

agrees that engaging in such acts or similar acts after the Effective Date of this Assurance may constitute, dependent upon the facts and circumstances to be later determined, a violation of the Order by which this Assurance is approved and adopted by this Court.

5.2 Johnson agrees to refrain from and to be permanently enjoined from engaging in any and all practices in violation of Virginia Code § 54.1-1115(B)(i) or the VCPA, as they now exist, or as amended in the future.

5.3 Johnson agrees to make available and to disclose the provisions of this Assurance to any employees, agents, and representatives of Kelly Home Improvement within five (5) business days of the Effective Date of this Assurance.

5.4 Johnson agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, limited liability company, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms of this Assurance, but is permitted to do any of the aforementioned for tax or legitimate corporate reasons.

5.5 Johnson agrees that he shall not represent that the Attorney General approves of or endorses his past or future business practices, or that the execution of this Assurance constitutes such approval or endorsement.

VI. RESTITUTION

6.0 The Commonwealth, as trustee, shall have judgment against and recover from, and judgment is hereby entered against, Johnson in the amount of $24,235, with interest from the Effective Date at the judgment rate of six percent (6%) per annum, for the use and benefit of, and restitution to, the following individuals in the following amounts, who paid monies to the Johnson for contractor services which were not provided:

Felecia Whitaker: $1,240

Jermall Harris:	$7,500
Charles Slater:	$11,900
Keta Jackson:	$720
Patsy Turner:	$425
Connie Smith:	$2,250
Corey Fox:	$200

6.1 Any payment made pursuant to any court order[1] for purposes of restitution to an individual identified in paragraph 6.0 relating to the conduct at issue in this Assurance will be deemed a payment to satisfy this restitution judgment, up to the amount outstanding for that individual.

VII. CIVIL PENALTIES

7.0 The Commonwealth shall have judgment against and recover from, and judgment is hereby entered against, Johnson in the amount of $17,500 for civil penalties, with interest from the Effective Date at the judgment rate of six percent (6%) per annum. Any amounts paid and collected pursuant to Section VII shall be deposited to the Attorney General's Regulatory, Consumer Advocacy, Litigation and Enforcement Revolving Trust Fund.

VIII. ATTORNEYS' FEES

8.0 The Commonwealth shall have judgment against and recover from, and judgment is hereby entered against, Johnson in the amount of $2,500 for reasonable expenses, costs and attorneys' fees in investigating and preparing this action with interest from the Effective Date at the judgment rate of six percent (6%) per annum. Any amounts paid and collected pursuant to Section VIII shall be deposited to the Attorney General's Regulatory, Consumer Advocacy,

[1] The Commonwealth understands that the Circuit Court of the City of Richmond has issued at least two orders for criminal restitution – one for Felecia Whitaker (Case No. CR15F04290-00) and one for Connie Smith (Case No. CR16F01884-00) – in matters related to the contractor services provided to them by Johnson.

Litigation and Enforcement Revolving Trust Fund.

IX. SIGNATURES

8.0 Each undersigned individual represents that he is fully authorized by the Party he represents to enter into this Assurance and to legally bind such Party to the terms and conditions herein.

Signed this 17th day of November, 2016.

FOR THE PLAINTIFF:

COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL

By: _____
Stephen J. Sovinsky (VSB No. 85637)
Assistant Attorney General
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Counsel for Commonwealth of Virginia, ex rel. Mark R. Herring, Attorney General

FOR THE DEFENDANT:

KELLY PATRICK JOHNSON,
individually, and d/b/a Kelly Home Improvement

By: Kelly Patrick Johnson
Kelly Patrick Johnson