

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION**

JEFF GILL,)
)
 Plaintiff,)
)
 v.)
)
 CHICAGO FANTASY SPORTS, LLC,)
 an Illinois limited liability company,)
 WADE J. GOLAB, and ROBERT J.)
 SMOLARCZYK,)
)
 Defendants.)

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COUNTY ILLINOIS
LAW DIVISION
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VERIFIED COMPLAINT AT LAW

Plaintiff, Jeff Gill, by and through his attorney, Jack L. Haan of Shaheen, Novoselsky, Staat, Filipowski & Eccleston, P.C., for his Complaint at Law for violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, common law fraud, and breach of contract against the Defendants, Chicago Fantasy Sports, LLC, Wade J. Golab, and Robert J. Smolarczyk, states as follows:

Introduction.

1. With this Complaint, Plaintiff Jeff Gill seeks a money judgment against Wade J. Golab, Robert J. Smolarczyk, and Chicago Fantasy Sports, LLC, for an amount not less than \$69,000.00, reimbursement of Plaintiff's attorney's fees pursuant to the Consumer Fraud Act, and an award of punitive damages in an amount at least 3 times the amount of monetary damages (\$207,000.00), plus other relief, for the Defendants' intentional and fraudulent wrongdoing, summarized as follows.

2. In mid-2009, Wade J. Golab and Robert J. Smolarczyk managed Chicago Fantasy Sports, LLC, a limited liability company doing business under the name of the American Fantasy

Football League (“AFFL”). The AFFL operated contests for fantasy football players who sought to test their game playing skills against one another for cash prizes and awards. To induce fantasy football players and consumers to enter into their contests, the Defendants represented – in writing – on two separate occasions in their AFFL Rules and Regulations that payment of the cash prizes and awards for its fantasy football contests were “guaranteed”.

3. Jeff Gill entered several of the AFFL contests. Through his game playing skills, Jeff Gill achieved the highest pinnacle for a fantasy football player – winning a Championship and the Grand Prize. In early January, 2010, Jeff Gill won the AFFL’s Gold Division Championship Playoff Grand Prize of \$60,000.00, plus a Waterford Crystal Trophy valued at \$9,000.00, another Custom Trophy, plus \$5,900.00 in other cash prizes.

4. The Defendants, however, have failed and refused to pay Jeff Gill. In fact, they *admit* they cannot pay Jeff Gill his \$69,000.00 and other awards. The truth is that the Defendants *never* had sufficient funds to pay cash prizes and awards to the Grand Prize winner, and to several other winners. Despite this fact, the Defendants falsely promised to the participant consumers that payment was “guaranteed”, deceptively accepted the consumers’ entry fees, and deceitfully failed to tell the unsuspecting participants before or during the contests that the Grand Prize was, in essence, a “fantasy” of their own fraudulent making.

**COUNT I -
VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND
DECEPTIVE BUSINESS PRACTICES ACT- 815 ILCS 505 et seq.
(against Defendants Golab and Smolarczyk)**

General Facts.

5. Plaintiff, Jeff Gill, is an individual residing in the State of Texas.
6. Defendant, Chicago Fantasy Sports, LLC (“CFS”), is a limited liability company organized in the State of Illinois, and does business from its primary business address in the City

of Chicago, County of Cook, Illinois.

7. Defendant, Wade J. Golab, in an individual residing in the City of Chicago, County of Cook, Illinois. Defendant Golab is a manager of CFS and one of the two primary principals in operating the business of CFS.

8. Defendant, Robert J. Smolarczyk, in an individual residing in the City of Chicago, County of Cook, Illinois. Defendant Smolarczyk is a manager of CFS and the other primary principal in operating the business of CFS.

9. Venue is proper in Cook County, Illinois because all of the Defendants reside in Cook County, Illinois, and the various causes of action alleged herein accrued in Cook County.

***CFS Marketed to the Public and Operated Fantasy Football Contests
Under the Name of the American Fantasy Football League ("AFFL").***

10. In 2009, CFS operated high stakes fantasy football contests by under the public business name of the American Fantasy Football League ("AFFL"). The AFFL's fantasy football contests were classified into several levels with different entry fee costs, including the Platinum level (\$1,400.00 entry fee), Gold level (\$600 entry fee), Silver level (\$200), Bronze level (\$100) and Copper level (\$50).

11. Golab and Smolarczyk served as the representatives to the public and to the AFFL's contest entrants in regard to all communications for the AFFL's fantasy football contests. In fact, all actions of the AFFL were performed either by Golab, by Smolarczyk, or by both.

12. The CFS, through Golab and Smolarczyk, marketed the AFFL's contests to the public and to consumers in various ways, including through the AFFL's website listed at www.affl.com.

***Golab & Smolarczyk Represent to the Public
That the Cash Prizes for the AFFL are "Guaranteed".***

13. In connection with the AFFL's fantasy football contests, Golab and Smolarczyk established and used rules entitled "2009 Rules and Regulations" ("Rules and Regulations") to govern all contests at the AFFL. A copy of the Rules and Regulations are attached hereto and incorporated herein as Exhibit A.

14. Golab and Smolarczyk published the AFFL's Rules and Regulations on its website to consumers and potential entrants for the AFFL's contests.

15. In the Rules and Regulations, Golab and Smolarczyk represented on two separate instances to consumers and potential entrants that the cash prizes for the AFFL contests were "guaranteed", as follows:

- "Game of Skill: the American Fantasy Football League (AFFL) is a game of skill that offers **guaranteed** cash awards to participants." (Ex. A, p. 1) (emphasis added).
- **"*The current Platinum level Grand Prize is listed at \$50,000. This amount could be increased based on Participation Levels. This value will not be able to adjust downward, only upward. The Platinum Grand Prize will increase to \$65,000.00 at 10 Leagues and \$80,000.00 at 14 Leagues. All other prizes are guaranteed as stated above."** (Ex. A, ¶ 16)(emphasis added).

16. The "guaranteed" grand prize for winning the Gold Division was \$60,000.00. (Ex., A, ¶ 16).

17. Golab and Smolarczyk also represented in the Rules and Regulations that the grand prize winner of each level "will each receive a Custom Crystal Engraved Trophy". (Ex. A, ¶ 16) ("Custom Trophy").

18. In addition, Golab and Smolarczyk represented in the Rules and Regulations that one winner – the Grand Champion - "will receive a Waterford Crystal AFFL Trophy; \$9,000 Retail Value (this is in addition to the prize money)". (Ex. A, ¶ 6 d., 16) ("Waterford Trophy").

To determine the Grand Champion, the Champions of each level were to compete against each other in week 17 of the NFL regular season in a one week playoff. The team with the most points scored in week 17, together with their total points scored in the 4 weeks of Championship Playoffs, would decide the Grand Champion and the winner of the Waterford Trophy.

Jeff Gill Enters Teams in the AFFL's Gold Division.

19. The AFFL proceeded to accept registrations and participants and collected entry fees from hundreds of fantasy football participants for the various levels of the AFFL's contests.

20. Based upon the Defendants' representations of cash prizes to be awarded to the winners in the AFFL's fantasy football leagues, Jeff Gill signed up for and registered several contest entries with the AFFL, including 4 teams in the Gold Division. For each of these teams, Jeff Gill paid his entry fees through monetary credits owed to him by the AFFL. The AFFL offered and accepted these credits as Jeff Gill's entry payments for each of his contest teams.

Jeff Gill's Team Wins the Gold Division, its Grand Prize, and the Waterford Trophy.

21. After weeks 1-12 of regular season play in the AFFL contests, Jeff Gill's teams won a total of \$5,900.00 in league prizes, comprised of \$3,600.00 for winning a \$500 league championship, \$500.00 for a 3rd place finish in a separate \$500.00 league, and \$1,800.00 for winning a Gold Division league championship.

22. Jeff Gill's Gold Division team moved on to the Championship Playoffs. On or about January 3, 2010, after 5 weeks of Playoffs, Jeff Gill's team finished first overall in the Championship Playoffs in the Gold Division, and thereby won the Championship Playoff Grand Prize of \$60,000.00 and the Custom Trophy for the Gold Division.

23. In addition, Jeff Gill's championship team in the Gold Division defeated the champions of the other AFFL levels in week 17 of the season, and therefore, per the AFFL's

Rules and Regulations, won the Waterford Trophy with a retail value of \$9,000.00. In an e-mail dated January 19, 2010, Defendant Smolarczyk acknowledged that Jeff Gill won the Waterford Trophy.

The Defendants Fail to Pay Jeff Gill His Cash Prizes.

24. The AFFL's Rules and Regulations represent that "All prize checks will be mailed out by Monday, February 8th, 2010, to the address submitted when the participant registered".

25. The Defendants failed to honor their own Rules and Regulations by failing to mail any check to Jeff Gill prior to February 8, 2010. As of the date of filing this Complaint, the Defendants have paid Jeff Gill only \$5,900.00.

26. Most importantly, the Defendants have knowingly and inexcusably failed to pay the \$60,000.00 Grand Prize, the Waterford Trophy, or the Custom Trophy to Jeff Gill.

27. Wade Golab admitted to Jeff Gill that the Defendants did not have the funds to pay him the Grand Prize and other prizes.

28. Upon information and belief, the AFFL has failed to pay other winners of cash prizes in AFFL contest levels as well.

29. At no time prior to the beginning of the contests, or at any time during the course of the contest, did the Defendants disclose that they did not have the necessary monies to pay the winners of the Gold Division or other levels of the AFFL.

30. The fact that the Defendants did not have the necessary monies to pay the winner of the Gold Division or other levels of the AFFL contests prior to the start of the contests was a material fact which Golab and Smolarczyk should have disclosed to the participants prior to the start of the contests.

***Pursuant to the Consumer Fraud and Deceptive Business Practices Act,
the Defendants Falsely, Deceptively, and Unlawfully Misrepresented
That the Prizes and Awards were "Guaranteed".***

31. At all relevant times there was in full force and effect in Illinois the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.* (the "Act"), which states in pertinent part in Section 2 of the Act as follows:

"2. Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act." 815 ILCS 505/2.

32. Golab's and Smolarczyk's representations that the cash awards and prizes were "guaranteed" constitute unlawful conduct in violation of Section 2 of the Act, in that the statements were deceptive acts, misrepresentations, and false promises.

33. Golab's and Smolarczyk's failure to disclose to the participants of the AFFL that the AFFL did not have the necessary funds to pay the winners prior to the start of the contests constitutes unlawful conduct in violation of Section 2 of the Act, in that the Defendants suppressed and omitted disclosing such material fact to Jeff Gill and the other AFFL entrants.

34. The occurrence of the false and deceptive representations and unlawful acts occurred in a course of conduct involving trade or commerce.

35. The Defendants intended that Jeff Gill, and all of the AFFL's other fantasy football entrants, rely on the false and deceptive representations in the AFFL's Rules and Regulations, so that its participants and consumers would register for their contests and pay their entry fees to the AFFL.

36. The Defendants' false representations and deceptions proximately caused damages to Jeff Gill because of their failure to pay the cash prizes and awards to him.

37. To date, the Defendants have paid only \$5,900.00 to Jeff Gill, thereby leaving unpaid the \$60,000.00 Grand Prize plus the Waterford Trophy valued at \$9,000.00, for a total amount of \$69,000.00.

WHEREFORE, the Plaintiff, Jeff Gill, demands judgment against Defendants, Wade J. Golab and Robert J. Smolarczyk, jointly and severally, in the amount of \$69,000.00, plus the Custom Trophy or monetary damages for its comparable retail value, an award of attorney's fees and court costs pursuant to Section 10a (c) of the Act, and any further relief that the Court deems equitable and just.

**COUNT II -
COMMON LAW FRAUD
(against Defendants Golab and Smolarczyk)**

1 - 37. Plaintiff restates and realleges paragraphs 1- 37 of Count I as and for paragraphs 1 - 37 of Count II as if fully set forth herein.

38. The Defendants knew or should have known that they would not be able to pay the Gold Division Grand Prize winner at the end of the football season.

39. Jeff Gill relied on the false and deceptive representations made by Golab and Smolarczyk in the AFFL's Rules and Regulations and entered the contests in the AFFL.

40. As a result of the Defendants' false misrepresentations and omission of material facts, Jeff Gill suffered damages in an amount of not less than \$69,000.00.

41. Jeff Gill has demanded payment from the Defendants, but the Defendants have failed and refused, and continue to fail and refuse, to pay the cash prizes and awards to Jeff Gill.

42. The Defendants' actions in collecting entry fees from the AFFL participants while

knowing they would be unable to pay the Grand Prize winner of the Gold Division and other winners, and in failing to inform the contest participants of this fact prior to the start of the AFFL contests, were and are intentional, willful and fraudulent acts which subject the Defendants to the an award of punitive damages against them.

WHEREFORE, the Plaintiff, Jeff Gill, demands judgment against Defendants, Wade J. Golab and Robert J. Smolarczyk, jointly and severally, in the amount of \$69,000.00, plus the Custom Trophy or monetary damages for its comparable retail value, plus punitive damages in an amount not less than 3 times the amount of monetary damages (\$207,000.00), court costs, and any further relief that the Court deems equitable and just.

**COUNT III -
BREACH OF CONTRACT.
(against CFS)**

1 - 42. Plaintiff restates and realleges paragraphs 1- 42 of Count II as and for paragraphs 1 - 42 of Count III as if fully set forth herein.

43. The AFFL's Rules and Regulations specifically state that "These Rules and Regulations are considered a binding agreement between CFS and each of the principal registrants". (See Exhibit A, ¶18 x). Accordingly, the Rules and Regulations are a binding contract between CFS and Jeff Gill.

44. CFS breached the contract by failing to pay Jeff Gill the \$69,000.00 plus the Custom Trophy due to him on or before February 8, 2010.

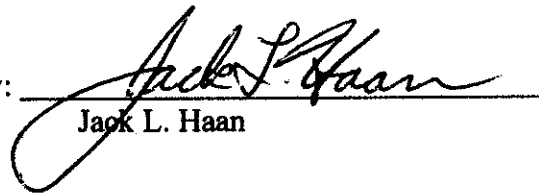
45. Jeff Gill has fully performed all obligations required of him under the contract.

46. After all credit payments are given to CFS, Jeff Gill has suffered damages in the amount of not less than \$69,000.00, plus the Custom Trophy for winning the Gold Division.

WHEREFORE, the Plaintiff, Jeff Gill, demands judgment against Chicago Fantasy Sports, LLC, an Illinois limited liability company, in the amount of \$69,000.00, plus the Trophy or monetary damages for its comparable retail value, plus 5% interest pursuant to the Illinois Interest Act, court costs, and any further relief that the Court deems equitable and just.

Plaintiff, Jeff Gill,

By: _____


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