

FILED

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

MAR 09 2017

4

David Madigan
Clerk of the
Circuit Court

THE PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,)
)
-vs-)
)
PALMCO POWER IL, LLC,)
)
)
Defendant.)

No. 2017 CH 00099

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

NOW COMES the plaintiff, THE PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and brings this action for injunctive and other relief against defendant, PALMco Power IL, LLC (hereinafter "Palmco"), for violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.*

PUBLIC INTEREST

1. The Illinois Attorney General believes this action to be in the public interest of the citizens of the State of Illinois and brings this lawsuit pursuant to the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/7(a).

JURISDICTION AND VENUE

2. This action is brought for and on behalf of THE PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, pursuant to the provisions of the Consumer Fraud and Deceptive Business Practices Act ("Consumer Fraud Act"), 815 ILCS 505/1 *et seq.*, and her common law authority as Attorney General to represent the People of the State of Illinois.

3. Venue for this action properly lies in Sangamon County, Illinois, pursuant to Section 2-

101 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-101, in that some of the transactions out of which this action arose occurred in Sangamon County.

PARTIES

4. Plaintiff, THE PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, the Attorney General of the State of Illinois, is authorized to enforce the Consumer Fraud Act.

5. Defendant, Palmco, is an Illinois limited liability company with its principal place of business at 1350 60th Street, Brooklyn, New York 11219.

6. For purposes of this Complaint for Injunctive and Other Relief, any references to the acts and practices of Palmco shall mean that such acts and practices are by and through the acts of Palmco's officers, owners, members, directors, employees, salesperson, representatives and/or other agents.

TRADE AND COMMERCE

7. Subsection 1(f) of the Consumer Fraud Act, 815 ILCS 505/1(f), defines "trade" and "commerce" as follows:

The terms 'trade' and 'commerce' mean the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this State.

8. The defendant was at all times relevant hereto, engaged in trade and commerce in the State of Illinois by operating as an electric power supply reseller.

DEFENDANT'S COURSE OF CONDUCT

9. In 2009, Palmco registered as a limited liability company in Illinois for the purposes of selling electricity to residential and commercial customers.

10. Palmco does not own electricity generation infrastructure, rather they operate as an electric supply reseller.

11. Palmco purchases electricity on the open market and then resells it to Illinois consumers in the territories covered by Ameren Illinois and Commonwealth Edison.
12. Palmco's electric service rates are calculated month to month on a variable rate basis as opposed to a fixed rate.
13. Upon information and belief, Palmco currently has around 8,000 customers in Illinois.

Defendant's Contract and Deceptive Pricing Structure

14. Palmco's contract states a consumer will pay a price that will vary from month to month and will be based on "a monthly weighted average of locational marginal prices determined hourly on a day ahead of real time basis, the cost of any supply and agency functions that PALMco performs for you, line loss, compliance costs, administrative costs incurred by PALMco Power, and other prevailing market conditions.....the price you pay also may include certain capacity, transmission, and ancillary costs incurred by PALMco."

15. This convoluted description of Palmco's pricing structure does not clearly and conspicuously disclose to consumers the reality of the situation, that the ultimate price consumers will be paying for electricity will be higher if they sign up for Palmco's services.

16. Initially, Palmco gives consumers a discounted rate that is slightly below the market rate of the consumers current electricity supplier for their first two months of service, but then begins a process of systematically raising consumers' rates to an amount that is sometimes as much as 4 times greater than what the consumer would have been paying their original electric provider if they had not switched to Palmco.

17. While Palmco's introductory materials state savings are not guaranteed, Illinois consumers report Palmco creating a much different impression.

Defendant's Sales Practices

18. Starting in December 2012, and continuing to the present, Palmco advertises its services via telemarketing and door to door sales.

19. As part of its sales pitch to consumers, Palmco describes its services as a way for consumers to save money by lowering their electric bills.
20. Palmco instructs its sales agents to tell Illinois consumers that electricity resellers like Palmco exist in hopes of reducing the overall cost of the utility bills for residents of Illinois.
21. With intent that consumers rely on this statement, Palmco offers Illinois consumers an “exclusive introductory rate” that is slightly lower than that of their current utility provider but state after 2 months the rate is variable month to month and could go up or down but that the rate will be similar to that of other utilities.
22. At no point during the initial sales call do Palmco’s sales representatives reveal how the variable rate the consumer will pay is calculated.
23. In reality, after 2 months, Palmco’s electric rates increase to a much higher rate for a period of 2 months, and then the rates increase again to a rate that is astronomically higher than that of the consumer’s original utility rate.
24. For example, in 2014, Palmco offered Ameren Illinois customers an introductory rate of \$0.041 per kWh, a 15% discount from what Ameren was charging at the time, \$0.04863 per kWh.
25. After this introductory rate expired however, Palmco’s rates increased 90% to \$0.0781 per kWh. The consumer was now paying 60% more than they were with their original utility.
26. After 2 months of being charged \$0.0781 per kWh, Palmco’s rates jumped to \$0.19252 kWh, a 370% increase from the introductory rate and 296% higher than the consumer was paying with their original utility just 4 months prior.
27. From at least January 2014 to July 2016, Palmco’s rate after the introductory period expired was never lower than that of a consumer’s original utility. To the contrary, the rates were always significantly higher.
28. As described below, in the course of trade and commerce in the State of Illinois, Palmco

has engaged in acts or practices that violate Illinois law. Palmco's conduct is ongoing and has the potential to impact any Illinois consumers who purchase Palmco's goods or services.

Therefore, any examples provided of specific consumer experiences are simply illustrations and should not be construed as the only instance in which an Illinois consumer was harmed or could potentially be harmed by Palmco.

Examples of Illinois Consumer Experiences with Palmco

29. Illinois consumer Timothy M complained to the Illinois Attorney General that Palmco contacted him by phone with an offer to lower his electric bill if he would switch to their service stating there was a possibility that there would be a slight increase after the first two months of service but that the rate would be competitive with other energy suppliers in the consumer's area.

30. When consumer Timothy M received his bill after his third month with Palmco, his electricity rate had tripled compared to his original rate with his original electricity supplier.

31. Illinois Consumer Joan M complained to the Illinois Attorney General that Palmco contacted her by phone and told her that they could save her money on her electric bill.

32. Over the first two months, the consumer saved \$36.18 compared to the same two months with Ameren the year before. In months 3 and 4 however, she paid \$104.24 more than she did the year previously with Ameren. In month 5 her bill had increased to an astonishing \$383.32 over the previous year's bill for the same month.

33. The consumer's electric rate went from the discounted \$0.041 per kWh for 2 months to \$0.094 per kWh for the next 2 months, to a staggering \$0.172 per kWh in month 5 and beyond. During the same time period Ameren's rates were set between \$0.04598 and \$0.05974 per kWh.

34. Despite representing that Palmco's business exists to lower consumers electric rates, consumers could only save money during the period when they were being baited in by Palmco's

artificially low rates for the first two months, but those savings were wiped away in month 3 by Palmco's staggering and undisclosed electric rate increase in the third month and beyond.

35. Not only is Palmco's pricing structure inherently deceptive and unfair, but Illinois consumers were induced to purchase Palmco's services through a myriad of lies told by Palmco's sales representatives.

Misrepresentation by Defendant's Sales Representatives

36. Palmco's sales process is a two-step process.

37. During the first step of the process, Palmco's sales representatives make a sales pitch to Illinois consumers to try to sign them up for Palmco's services. This portion of the interaction with the consumer is not recorded.

38. After the sales pitch is made, consumers are then required to complete an automated third party verification over the phone confirming they are signing up to receive Palmco's services.

39. Illinois consumers report Palmco's sales representatives engage in a pattern of deceptive and abusive conduct both over the phone and in person during the unrecorded sales portion of the process.

40. In some instances, Illinois consumers report being told over the phone by Palmco that they would save money by switching to Palmco's services when in reality the consumer only saved money during the first two months and afterwards were charged far in excess of what they were paying with their original utility provider. The consumer would not realize this spike in price until after they received their bill.

41. Multiple consumers report that Palmco stated its rates would always be competitive with that of the consumer's original electric provider. In truth, from at least 2014 to present, Palmco's electric rates have been significantly higher than that of Ameren Illinois and Commonwealth Edison.

42. At least one elderly Illinois consumer reported being told over the phone by Palmco that he was required to choose an electric supplier which was not true. Based upon this information, the consumer signed up for Palmco's services.

43. One consumer reported getting a phone call from Palmco where the sales representative stated Palmco would be the consumer's new electric supplier and asked for the consumer's utility account number and her birthdate. The consumer was never asked to make a purchasing decision despite this being a sales call by Palmco.

44. Consumers report Palmco contacting them and representing they were hired by the consumers' utility to make sure the consumers were being charged the correct rate when in reality Palmco was attempting to sign consumers up for its services.

45. Several consumers reported during telephone solicitations and in person during door to door sales interactions, Palmco sales agents represented they were employed by the consumers' current utility provider when in fact they were representatives of Palmco attempting to sign consumers up for Palmco's services.

46. One Illinois consumer reported that Palmco represented to her that Ameren was denied millions of state funds and was planning to double energy costs. Palmco then represented that switching to its services would save her money. In truth Palmco had no knowledge of what Ameren was planning to do with their rates and was simply trying to induce the consumer to sign up for Palmco's service.

47. One consumer reported that Palmco stated that Ameren was changing its name to Palmco when in truth Ameren is a separate company from Palmco and this was an attempt to induce the consumer to sign up for Palmco's service.

48. Multiple consumers report being signed up for Palmco's services without knowingly authorizing the switch.

49. After making a sale, Palmco initiated a three way automated call with a third party

verification system. In several instances, despite being required by law to drop off the call once the consumer is connected to the third party verification system, Palmco representatives stayed on the phone during the third party verification calls in violation of the law.

COUNT I-CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT

APPLICABLE STATUTE

50. Section 2 of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2, provides:

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.

VIOLATIONS

CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT SECTION 2

51. The People re-allege and incorporate by reference the allegations in Paragraphs 1 to 49.
52. While engaged in trade or commerce, the defendant has committed unfair and deceptive acts or practices declared unlawful under Section 2 of the Consumer Fraud Act, 815 ILCS 505/2, by, in the course of operating as an electric power supply reseller by:
- A. representing, expressly or by implication, that switching their energy supplier to defendant would save consumers money when such is not the case;
 - B. representing, expressly or by implication, that defendant's electric prices would be comparable to that of a consumer's original electric provider when such is not the case;
 - C. representing, expressly or by implication, that consumers were required to use defendant's services when such is not the case;

D. representing, expressly or by implication, that consumers had a pre-existing business relationship with defendant when such is not the case;

E. representing, expressly or by implication, that consumers' electric supplier was changing its name to Palmco when such is not the case;

F. representing, expressly or by implication, that defendant was affiliated with the consumers' original electric supplier when such is not the case;

G. representing, expressly or by implication, that defendant's sales representatives were contacting the consumer for a reason other than to sell defendant's services when such is not the case;

H. failing to disclose clearly and conspicuously to consumers how their variable rate would be calculated month to month; and

I. disclosing the method of calculating variable rates in a confusing manner that is not capable of being accurately replicated by consumers.

53. While engaged in trade or commerce, the defendant has committed unfair acts or practices declared unlawful under Section 2 of the Consumer Fraud Act, 815 ILCS 505/2, by in the course of operating as an electric power supply reseller, representing that consumers can save money through an attractive introductory rate, and then resetting the rate to a variable rate that:

A is not subject to accurate calculation by consumers because of the confusing way the defendant describes the method of calculating the rate; and

B. in fact was higher or significantly higher than the rate the consumer was paying before agreeing to switch to Palmco.

REMEDIES

53. Section 7 of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/7, provides:

(a) Whenever the Attorney General has reason to believe that any person is using, has used, or is about to use any method, act or practice declared by the Act to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the State against such person to restrain by preliminary or permanent injunction the use of such method, act or practice. The Court, in its discretion, may exercise all powers necessary, including but not limited to: injunction, revocation, forfeiture or suspension of any license, charter, franchise, certificate or other evidence of authority of any person to do business in this State; appointment of a receiver; dissolution of domestic corporations or association suspension or termination of the right of foreign corporations or associations to do business in this State; and restitution.

(b) In addition to the remedies provided herein, the Attorney General may request and this Court may impose a civil penalty in a sum not to exceed \$50,000 against any person found by the Court to have engaged in any method, act or practice declared unlawful under this Act. In the event the court finds the method, act or practice to have been entered into with intent to defraud, the court has the authority to impose a civil penalty in a sum not to exceed \$50,000 per violation.

(c) In addition to any other civil penalty provided in this Section, if a person is found by the court to have engaged in any method, act, or practice declared unlawful under this Act, and the violation was committed against a person 65 years of age or older, the court may impose an additional civil penalty not to exceed \$10,000 for each violation.

54. Section 10 of the Consumer Fraud Act, 815 ILCS 505/10, provides that “in any action brought under the provisions of this Act, the Attorney General is entitled to recover costs for the use of this State.”

PRAYER FOR RELIEF-COUNT I

WHEREFORE, the plaintiff prays that this honorable Court enter an Order:

- A. Finding that the defendant has violated Section 2 of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2, by engaging in the unlawful acts and practices alleged herein;
- B. Preliminarily and permanently enjoining the defendant from engaging in the deceptive and unfair practices alleged herein;
- C. Declaring that all contracts entered into between the defendant and Illinois consumers

by the use of methods and practices declared unlawful are rescinded and requiring that full restitution be made to said consumers;

D. Assessing a civil penalty as provided in Section 7 of the Consumer Fraud Act, 815 ILCS 505/7;

E. Assessing an additional civil penalty in the amount of Ten Thousand Dollars (\$10,000) per violation of the Consumer Fraud Act found by the Court to have been committed by the defendant against a person 65 years of age and older as provided in Section 7(c) of the Consumer Fraud Act, 815 ILCS 505/7(c);

F. Requiring the defendant to pay all costs for the prosecution and investigation of this action, as provided by Section 10 of the Consumer Fraud Act, 815 ILCS 505/10; and

G. Providing such other and further equitable relief as justice and equity may require.

**COUNT II- CONSUMER FRAUD AND DECEPTIVE BUSINESS
PRACTICES ACT SECTION 2EE**

APPLICABLE STATUTE

55. Section 2EE of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2EE, provides “an electric service provider shall not submit or execute a change in a subscriber's selection of a provider of electric service unless and until...the provider has obtained the subscriber's express agreement to accept the offer after the disclosure of all material terms and conditions of the offer...”

56. Section 2EE (b) of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2EE, provides:

Automated third-party verification systems and 3-way conference calls may be used for verification purposes so long as the other requirements of this subsection (b) are satisfied.

A supplier or supplier's sales representative initiating a 3-way conference call or a call through an automated verification system must drop off the call once the 3-way connection has been established.

VIOLATIONS

57. The People re-allege and incorporate by reference the allegations in Paragraphs 1 to 49.
58. While engaged in trade or commerce, the defendant has committed unfair and deceptive acts or practices declared unlawful under Section 2 of the Consumer Fraud Act, 815 ILCS 505/2EE, by, in the course of operating as an electric power supply reseller, signing consumers up for defendant's services without consumers' express authorization.
59. While engaged in trade or commerce, the defendant has committed unfair and deceptive acts or practices declared unlawful under Section 2 of the Consumer Fraud Act, 815 ILCS 505/2EE(b), by, in the course of operating as an electric power supply reseller, not dropping off of automated third party verification 3-way conference calls once the 3-way connection has been established.

REMEDIES

60. Section 7 of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/7, provides:
- (a) Whenever the Attorney General has reason to believe that any person is using, has used, or is about to use any method, act or practice declared by the Act to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the State against such person to restrain by preliminary or permanent injunction the use of such method, act or practice. The Court, in its discretion, may exercise all powers necessary, including but not limited to: injunction, revocation, forfeiture or suspension of any license, charter, franchise, certificate or other evidence of authority of any person to do business in this State; appointment of a receiver; dissolution of domestic corporations or association suspension or termination of the right of foreign corporations or associations to do business in this State; and restitution.
 - (b) In addition to the remedies provided herein, the Attorney General may request and this Court may impose a civil penalty in a sum not to exceed \$50,000 against any person found by the Court to have engaged in any method, act or practice declared unlawful under this Act. In the event the court finds the method, act or practice to have been entered into with intent to defraud, the court has the authority to impose a civil penalty in a

sum not to exceed \$50,000 per violation.

- (c) In addition to any other civil penalty provided in this Section, if a person is found by the court to have engaged in any method, act, or practice declared unlawful under this Act, and the violation was committed against a person 65 years of age or older, the court may impose an additional civil penalty not to exceed \$10,000 for each violation.

61. Section 10 of the Consumer Fraud Act, 815 ILCS 505/10, provides that “in any action brought under the provisions of this Act, the Attorney General is entitled to recover costs for the use of this State.”

PRAYER FOR RELIEF-COUNT II

WHEREFORE, the plaintiff prays that this honorable Court enter an Order:

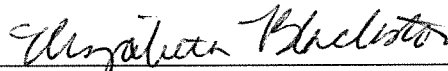
- A. Finding that the defendant has violated Section 2 of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2, by engaging in the unlawful acts and practices alleged herein;
- B. Preliminarily and permanently enjoining the defendant from engaging in the deceptive and unfair practices alleged herein;
- C. Declaring that all contracts entered into between the defendant and Illinois consumers by the use of methods and practices declared unlawful are rescinded and requiring that full restitution be made to said consumers;
- D. Assessing a civil penalty as provided in Section 7 of the Consumer Fraud Act, 815 ILCS 505/7;
- E. Assessing an additional civil penalty in the amount of Ten Thousand Dollars (\$10,000) per violation of the Consumer Fraud Act found by the Court to have been committed by the defendants against a person 65 years of age and older as provided in Section 7(c) of the Consumer Fraud Act, 815 ILCS 505/7(c);
- F. Requiring the defendant to pay all costs for the prosecution and investigation of this

action, as provided by Section 10 of the Consumer Fraud Act, 815 ILCS 505/10; and

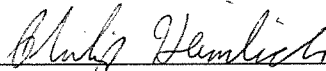
G. Providing such other and further equitable relief as justice and equity may require.

Respectfully submitted,

THE PEOPLE OF THE STATE OF
ILLINOIS, by LISA MADIGAN,
ATTORNEY GENERAL OF ILLINOIS



Elizabeth Blackston
Consumer Fraud Bureau, Chief



Philip Heimlich
Assistant Attorney General
Consumer Fraud Bureau
500 South Second Street
Springfield, IL 62701
Telephone: (217) 782-4436