

**STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT**

STATE OF VERMONT,)	CIVIL DIVISION
Plaintiff)	Docket No. _____
)	
v.)	
)	
CHARLES NESTOR, DBA)	
EXPOS AND SHOWS /)	
MADE IN VERMONT USA)	
Defendant)	

CONSUMER PROTECTION COMPLAINT

I. Introduction

1. The Vermont Attorney General brings this suit under the Vermont Consumer Protection Act, 9 V.S.A. §§ 2451-2481 in response to consumer fraud violations by Defendant Charles Nestor, DBA Expos and Shows / Made in Vermont USA. Defendant solicited payment from Vermont consumers to be exhibitors, vendors and sponsors for a trade festival titled the "Made in Vermont Festival" (the "Festival") and to advertise in the "2011-2012 Annual Guide to Made in Vermont Products/Services" (the "Guide"). Despite Defendant's receiving over \$21,000, the Festival never took place, the Guide was never published, and the exhibitors, vendors, and sponsors that had paid to participate in the Festival and advertise in the Guide lost their money.

II. Parties, Jurisdiction and Related Matters

2. Defendant Charles Nestor ("Nestor") is a resident of St. Johnsbury, Vermont. Nestor is the sole proprietor of Expos and Shows and Made in Vermont USA, both unincorporated entities that are not registered as business entities with the Vermont Secretary of State.

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3. At all times relevant to this Complaint, Defendant did business in Vermont and solicited payments from Vermont consumers.

4. The Vermont Attorney General is authorized under the Vermont Consumer Protection Act, 9 V.S.A. § 2458(b), to sue to enforce the Act's prohibitions on unfair and deceptive acts and practices in commerce.

5. This Court has personal jurisdiction over Defendant and is the proper venue for this action because Defendant engaged in or otherwise authorized marketing and solicitations throughout Vermont, including in Washington County.

6. This action follows the investigation of, including the issuance of civil investigative subpoenas to, Defendant and Defendant's financial institution, pursuant to the Vermont Consumer Protection Act, 9 V.S.A. § 2460(a).

7. This action is in the public interest.

III. Statutory Framework

8. Section 2453(a) of the Vermont Consumer Protection Act prohibits unfair and deceptive acts and practices in commerce.

9. The Consumer Protection Act also provides that consumers have a three-day right to cancel a telephonic sale, with some limited exceptions, and that the seller must provide oral notice of that right, as well as a "short-form" and "long-form" notice. 9 V.S.A. §§ 2451a(d) (defining "home solicitation sale"), 2454; Vermont Consumer

Protection Rule (CP) 113, available at

<http://www.atg.state.vt.us/assets/files/CP%20113.pdf>.

IV. Facts

10. Between April and August 2011, Defendant Nestor, under the names Expos and Shows and Made in Vermont USA, solicited payments from Vermont consumer businesses to participate as exhibitors, vendors, or sponsors (collectively, "Participants") in the Festival, which was "dedicated to showcasing & celebrating VT products/services."

11. Defendant represented to Participants that the Festival was to take place September 10-11, 2011, at Waterfront Park in Burlington, Vermont.

12. The Festival was promoted to Participants via a website located at www.madeinvermontusa.com, mailings, and telephonic solicitations.

13. The solicitations also sought payments for advertising in the Guide, which was described as the "[f]irst comprehensive resource for 100% VT products and services. Distributed each October to 100K readers, statewide."

14. Defendant collected at least \$21,000 from at least thirteen Vermont businesses seeking to be sponsors, exhibitors, and food vendors at the Festival.

15. These businesses paid Nestor amounts ranging from approximately \$200-500 to be exhibitors and vendors at the Festival, to \$5,000 for sponsorship of the Festival and advertising in the Guide.

16. Defendant collected payments from Participants as late as August 5, 2011.

17. On or about August 22, 2011, Defendant sent a letter under the name Made in Vermont USA to the Participants announcing that, due to the small number of exhibitors and sponsors, the Festival would be postponed. The letter stated that Participants would be contacted by staff members within "the next few days," and that a rescheduled date would be announced in "2-3 weeks."

18. The August 22 letter promised that vendors and exhibitors would receive an equal sized booth at the rescheduled festival, a one year membership in Made in Vermont USA, and a free advertisement in the Guide, which Defendant valued at \$250-500.

19. The August 22 letter promised that paid sponsors would receive an equal value sponsorship at the rescheduled Festival, a one year membership in Made in Vermont USA, and an advertisement in the Guide double the size of the advertisement purchased with the sponsorship.

20. Staff members did not contact the Participants.

21. Defendant did not respond to numerous calls and emails from the Participants.

22. Defendant never announced a new date for the Festival.

23. The Festival never took place.

24. Many Participants put significant time and effort into preparing for the Festival. Some participants spent, in time and expenses, approximately as much money preparing for the Festival as they actually paid Defendant to be in the Festival.

25. Some Participants paid for advertisements in the Guide, and other Participants were promised advertisements as partial compensation for rescheduling the Festival.

26. The Guide was never published.

27. Marketing materials for the Festival contained untrue and deceptive statements, including:

- a. The use of brand logos of well known local businesses, including Johnson Woolen Mills, Weddings Tents & Events, and Higher Ground. None of these businesses agreed to sponsor the Festival or to have their logos used in this manner.
- b. The statement "Sponsors Included in Statewide Marketing Campaign" over the logos several businesses, including Vermont Life, The Point Independent Radio, WCAX, Seven Days, The World, and Higher Ground. None of these businesses were sponsors of or published advertising for the Festival.¹
- c. The statement, "200 Vendors!" and "SPACE IS LIMITED." Defendant signed up far fewer than 200 Vendors.

28. Though Defendant solicited and entered into agreements with many Participants wholly or in part via telephone, no Participant was sent a receipt containing the short form or long form notice of cancellation or any oral notice, alerting the business of its right to cancel within three business days, as required by the Consumer Protection Act, 9 V.S.A. 2454.

29. Common practice in producing a trade festival is to apply the participant's fees to the expenses required to hold the festival (*i.e.* advertising for attendees, payment to the venue, tent rental, porta-potties, and payment to festival employees, security and contractors), which mostly accrue during the last 30 days leading up to the festival, and to take profits from the "gate" (*i.e.* ticket sales).

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¹ Defendant did contract with Seven Days for an advertisement at the "sponsorship rate" which would have permitted them to use Seven Days' logo, but Defendant never paid for the advertisement, which nullified the agreement.

30. This practice allows whole or partial reimbursement to participants, if in the final month the organizer is required to cancel the event because not enough exhibitors or vendors sign up.

31. Despite Nestor's claimed nine years of experience working in this industry as a vice president of sales & marketing, a consultant and an independent trade show representative, he undercapitalized the business and spent the majority of the Participant fees submitted for the Festival on his own personal expenses, including rent, groceries, dining out, and clothing.

32. The Participant contracts contained, in small print on the back, the clause, "No refunds will be issued due to cancellation or postponement of the event by an act of God, local authorities, weather-related incident, *lack of interest, or for any other reason deemed appropriate by festival organizers.*" (Emphasis added.) This clause did not appear in any of the promotional materials.

33. Contracts for participation in similar festivals produced by other entities do not contain a cancellation clause this broad.

34. Defendant did not warn Participants of the possibility that the Festival would not take place or explain or describe the cancellation clause to any Participant.

V. Cause of Action: Unfair and Deceptive Trade Practices

35. Plaintiff realleges and incorporates by reference herein each and every allegation contained in the preceding paragraphs 1 through 34.

36. Defendant engaged in unfair and deceptive trade practices in commerce in violation of the Vermont Consumer Protection Act, 9 V.S.A. § 2453(a), including:

- a. Receiving payments from consumers to participate in an event, misappropriating the payments, and then cancelling the event with no reimbursement to consumers;
- b. Receiving payments from consumers for advertising in a guide, or promising advertising in a guide as consideration for payments received for the cancelled event, but not publishing the guide;
- c. Making false statements in promotional materials;
- d. Including a contract clause permitting Defendant to cancel the Festival for any reason, and providing no refunds in the event of such cancellation.
- e. Violating the Vermont Consumer Protection Act's requirements with respect to the provision of oral and written notice of the three-day right to cancel a telephonic transaction. 9 V.S.A. § 2454; Vermont Consumer Fraud Rule (CF) 113.

WHEREFORE Plaintiff State of Vermont requests judgment in its favor and the following relief:

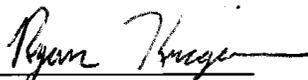
1. A permanent injunction prohibiting Defendant from engaging in any business activity in, into, or from Vermont that violates Vermont law.
2. A permanent injunction requiring Defendant to post a bond in an appropriate amount should he wish to engage in the promotion of any future event or publication involving the advance collection of money.

3. An accounting of all monies collected from Vermont consumers for the Festival and Guide.
4. Full restitution to all Vermont consumers who paid money to Defendant for the Festival or Guide and, and to the extent that any such consumer cannot be found after due diligence, payment of the restitution amount to the Vermont Treasurer to be treated as unclaimed funds.
5. Civil penalties of up to \$10,000.00 for each violation of the Consumer Protection Act.
6. The award of investigative and litigation costs and fees to the State of Vermont.
7. Such other relief as the Court deems appropriate.

Dated: 10/25/2013

STATE OF VERMONT

WILLIAM H. SORRELL
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