

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION

OSBORN TRANSPORTATION, INC.)
)
Plaintiff,)
)
v.)
)
PILOT CORPORATION; PILOT)
TRAVEL CENTERS, LLC; PILOT)
FLYING J,)
)
Defendants.)

Civil Action Number:

_____)
DEMAND FOR JURY TRIAL

COMPLAINT

COMES NOW, the plaintiff, OSBORN TRANSPORTATION, INC., and asserts the following claims against PILOT CORPORATION, PILOT TRAVEL CENTERS, LLC; and PILOT FLYING J (collectively "Pilot"), all corporations; to wit:

PARTIES

1. OSBORN TRANSPORTATION, INC. (herein after referenced to "OSBORN") is a corporation organized and doing business in the state of Alabama. OSBORN's principal place of business is located in Gadsden, Alabama which is located in the Northern District of Alabama, OSBORN is a customer of PILOT and does business in the state of Alabama.

2. Upon information and belief, PILOT CORPORATION is a Tennessee corporation. It conducts business throughout the United States and operates as PILOT TRAVEL CENTERS, LLC and PILOT FLYING J (herein after referenced to "PILOT").

3. Defendant, PILOT TRAVEL CENTERS, LLC, is a Delaware limited liability company, a division of PILOT CORPORATION. It conducts business throughout the United States.

4. Defendant, PILOT FLYING J, is a Tennessee company and a division of PILOT CORPORATION. It conducts business throughout the United States.

JURISDICTION

5. This court has jurisdiction of this cause pursuant to 28 U.S.C. § 1332(a) because the matter in controversy exceeds the sum of \$75,000.00; exclusive of interest and costs, and is a dispute between citizens of different states.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a) as a substantial part of the events or omissions giving rise to this action occurred in this district.

GENERAL ALLEGATIONS

7. PILOT is the largest travel centers network in the United States, with over five-hundred and fifty (550) locations under the PILOT and FLYING J brands. PILOT is the largest seller of over the road diesel fuel in the country.

8. PILOT sells fuel to trucking companies and truck drivers. As a part of its diesel fuel sales program, PILOT entered into agreements with its customers throughout the country, including allowance for rebate payments and/or credits based on diesel fuel purchases by its customers. OSBORN entered into such an agreement with PILOT.

9. PILOT, through its owners, executives, sales agents, sales managers, account representatives, and administrative personnel, willfully devised and conspired to devise a scheme to defraud PILOT'S customer OSBORN by deceptively reducing rebate amounts and deceptively changing agreed-upon diesel price discounts for the purpose of increasing PILOT'S

profitability and sales commissions for PILOT employees. Through this scheme which substantially increased PILOT'S profits and employees' commissions, PILOT willfully, routinely, systematically underwrote and underpaid rebate amounts owed to OSBORN. This scheme was executed by the intentional and deceptive reduction of the diesel discount agreement with OSBORN without OSBORN'S knowledge or approval, for the purpose of increasing PILOT'S profitability and the sales commission of PILOT employees. This deceptive practice is referred to at various times by PILOT employees as "managing the discounts" and "jacking the discount."

10. This scheme was executed by agents and employees of PILOT through their manual reduction of rebate amounts which refers to the amount of money that OSBORN should be credited or refunded pursuant to the terms of diesel the price discount deal and agreement entered into between PILOT and OSBORN. Also, these actions were done by PILOT to the detriment of OSBORN without OSBORN'S knowledge or consent.

11. Certain PILOT employees intentionally defrauded OSBORN by charging OSBORN a higher price than the contractually agreed upon price and then concealed the fact and nature of this increased price.

12. This intentional defrauding and deliberately charging OSBORN a higher price than contractually agreed upon resulting in reduced monthly rebate amounts without OSBORN'S knowledge for the purpose of increasing the profitability of PILOT and increasing sales commissions.

13. Based on information obtained from current and former employees involved in and, or as part of the scheme, the Federal Bureau of Investigation ("FBI") began an investigation of Pilot's unlawful activities in May of 2011. The affidavit of FBI special agent Robert Root,

dated April 18, 2013, filed in support of a search warrant application obtained in the investigation, was recently unsealed by the United States District Court for the Eastern District of Tennessee. The affidavit details the facts underlying the FBI's investigation together, with the names of various executives and employees of PILOT involved in the scheme. This sworn affidavit also describes how the scheme was planned and executed by PILOT. A copy of the investigator's sworn affidavit is attached hereto as "Exhibit A".

14. Under this fraudulent scheme as alleged, PILOT contracted with OSBORN to provide a rebate paying program for all diesel fuel purchased at their Travel Centers throughout the country.

15. Under the terms of the rebate agreement, OSBORN would receive their rebate amount by check, either monthly or quarterly. For those customers, PILOT extended credit for the purchase of diesel fuel (referred to as "direct bill customers"), they received a direct discount on their invoices for diesel fuel purchases.

16. Further at PILOT'S corporate sales seminars and meetings, PILOT sales representatives and employees were instructed in how to engage in this scheme and reduce rebate payments. Sales representatives were also trained on how to target customers who would not recognize any price or rebate discrepancies.

COUNT I:

Breach of Contract

17. OSBORN incorporates by reference all preceding paragraphs, as fully set forth herein.

18. OSBORN had a contract with defendant, PILOT for a “rebate amount” which was the amount of money that OSBORN should be credited or refunded pursuant to the terms of diesel price discount deal and agreement between PILOT and OSBORN.

19. Under the agreement terms, plaintiff OSBORN was entitled to receive specified rebate amounts based upon the amount of diesel fuel purchased. PILOT breached this agreement by reducing OSBORN’s rebate amount without the knowledge or consent or agreement of OSBORN.

20. PILOT has by engaging in the intentional and deceptive reduction of diesel discount agreements with OSBORN without OSBORN’S knowledge or approval, for the purpose of increasing PILOT’S profitability in the sales commission of PILOT’S employees; breached their contract with OSBORN.

21. As a result of PILOT’S breach, OSBORN has been damaged by being paid less than their agreed upon rebate amount.

COUNT II:

Conversion

22. OSBORN incorporates by reference all preceding paragraphs, as fully set forth herein.

23. PILOT by reducing the agreed upon rebate amount, wrongfully converted consumer rebate money of OSBORN for its own use and benefit.

24. As a result of the conversion of rebate money, OSBORN has been damaged and is entitled to a return of the unlawfully converted funds from PILOT.

COUNT III:

Unjust Enrichment

25. OSBORN incorporates by reference all preceding paragraphs, as fully set forth herein.

26. PILOT has been, and continues to be, unjustly enriched, to the detriment of and at the expense of the OSBORN as a result of their conduct directed against the OSBORN and the resulting collection of money from the sale of diesel fuel.

27. PILOT has unjustly benefitted through the unfair or deceptive and unlawful collection of money from the sale of diesel fuel, and continues to do so at their benefit and continue to do so at the detriment and expense of OSBORN.

28. Accordingly, PILOT should not be allowed to retain the proceeds from the benefits conferred upon it by OSBORN who seeks disgorgement of PILOT'S unjustly acquired profits and other monetary benefits resulting from its unfair deceptive and thereby unlawful conduct, and seek restitution and/or rescission for the benefit of the OSBORN in a equitable and efficient fashion to be determined by the Court.

COUNT IV:

Promissory Fraud

29. OSBORN incorporates by reference all preceding paragraphs, as fully set forth herein.

30. As set out in detail in the preceding paragraphs, PILOT made misrepresentations to OSBORN.

31. When PILOT made the above-described promises and representations, PILOT possessed an actual fraudulent intent not to perform them and intent to deceive OSBORN.

32. These representations were false.
33. OSBORN reasonably relied on these misrepresentations.
34. As a result, OSBORN was damaged.

COUNT V:

Fraudulent Misrepresentation

35. OSBORN incorporates by reference all preceding paragraphs, as fully set forth herein.

36. As set out in detail in the preceding paragraphs, PILOT made misrepresentations to the OSBORN.

37. These representations concerned material facts.

38. These representations were false.

39. PILOT knew these representations were false when they were made to the OSBORN.

40. PILOT wantonly, willfully, recklessly, oppressively, outrageously, and/or intentionally made the above-described representations to the OSBORN without regard for the truthfulness or falsity of the representations.

41. PILOT made these representations with the intention that the OSBORN would rely on them.

42. OSBORN reasonably relied on these representations to their detriment.

COUNT VI:

Deceit

43. OSBORN incorporates by reference all preceding paragraphs, as fully set forth herein.

44. As set out in detail in the preceding paragraphs, PILOT made representations to the OSBORN.

45. PILOT made these representations wantonly, willfully, recklessly, oppressively, outrageously, and/or intentionally.

46. These representations were made wantonly, willfully, recklessly, oppressively, outrageously, and/or intentionally, OSBORN was damaged.

COUNT VII:

Violation of Tennessee Consumer Protection Act of 1977

47. OSBORN incorporates by reference all preceding paragraphs, as fully set forth herein.

48. Tennessee Code § 47-18-104, prohibits unfair or deceptive acts. Specifically, Tenn. Code § 47-18-104(b)(11) declares that conduct is unfair or deceptive and thereby unlawful and in violation of the TCPA if it involves “[m]aking false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions.”

49. In engaging in the conduct described herein, as more specifically set forth in Paragraphs 1 -16, above and “Exhibit A” to this Complaint, PILOT violated the TCPA.

50. PILOT’S misconduct was willful or a knowing violation of the statute.

51. Were it not for the misconduct of PILOT, OSBORN would not have purchased fuel from PILOT at the price paid to PILOT.

52. OSBORN has suffered and will continue to suffer injury in fact and suffer damages as a result of PILOT unfair or deceptive trade practice, in that each has expended money to purchase fuel from PILOT at a price that was higher.

53. As a result of the violations of TCPA engaged in by PILOT, OSBORN is entitled to injunctive relief, monetary, treble damages, and punitive damages, and an award for attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, OSBORN prays for relief as follows:

- A. For an order awarding OSBORN restitution and/or disgorgement and other equitable relief as the Court deems proper;
- B. For an order awarding OSBORN compensatory and punitive damages, as well as treble damages, as to the appropriate causes of action;
- C. For an order enjoining PILOT, from continuing to engage in business acts and practice, which are unlawful, unfair or fraudulent, as alleged herein;
- D. For an order awarding OSBORN pre-judgment and post-judgment interest, as well as reasonable attorneys' fees and expert-witness fees and other costs as may be applicable; and
- E. For an order awarding such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury of all claims asserted in this Complaint.

Dated: May 10, 2013

Respectfully submitted,

/s/ Jeffrey C. Kirby

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