

STATE OF NORTH CAROLINA  
COUNTY OF WAKE 2010 MAY -6 PM 4:09

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
File No. 08 CVS 16289

WAKE COUNTY, O.S.C.  
STATE OF NORTH CAROLINA, *ex rel.* )  
ROY COOPER, ATTORNEY GENERAL, )

Plaintiff, )

v. )

THE WINDOW PROS OF HICKORY, )  
INC., d/b/a THE WINDOW PROS, )

Defendant. )

**JUDGMENT BY CONSENT AND  
AGREED PERMANENT INJUNCTION**

**This Matter** coming on to be heard and being heard by the undersigned Judge presiding over the May 3, 2010 civil session of Wake County Superior Court upon application by the parties for entry of a Judgment by Consent and Agreed Permanent Injunction concluding this litigation; and the parties, by their signatures below, having represented to the Court that they have settled all matters in controversy currently existing between them in this litigation and that most of the terms conditions of that settlement are set forth in a separate Settlement Agreement which they have now executed and which is not being filed with the Court; and the parties representing further that their settlement calls for certain conditions and restrictions to be set forth in a Permanent Injunction issued upon the conclusion of this litigation; and the Court accepting the parties' representations that the following injunctive provisions are the result of negotiation and compromise by the parties and do not constitute an admission by defendant that the legal claims and factual allegations set forth in the plaintiff's Complaint are correct or that defendant has engaged in any activities in violation of law or trade practice regulations; and the Court finding and concluding from the record in this cause and the

representations of the parties that it has personal jurisdiction over the defendant and subject matter jurisdiction in this cause and that entry of the following injunctive provisions would be reasonable and legally appropriate;

**IT IS THEREFORE ORDERED, with the consent of the parties,** that defendant, together with its employees, officers, agents, subcontractors, corporate successors and assigns, and any others acting in concert with defendant who have knowledge hereof, be and hereby are Permanently Enjoined and prohibited from engaging in off-premises or in-home sales transactions with North Carolina home owners unless:

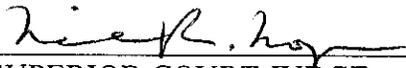
- a. All such transactions not initiated or executed at defendants' business premises fully comply with the disclosure provisions and requirements of N.C. Gen. Statute § 14-401.13 ("Failure to give right to cancel in off-premises sales"), a copy of which is attached hereto;
- b. Defendant has devised, implemented and maintained a written plan for ensuring that its sales employees and independent sales agents have been instructed on the requirements of N.C. Gen. Statute § 14-401.13, including the accurate conveyance of both written and verbal notices of customers' three-day cancellation rights.

**IT IS FURTHER ORDERED, with the consent of the parties,** that the Court makes no award of costs, expenses, restitution to consumers, damages, penalties or attorneys' fees, as those matters are to be governed by the aforementioned Settlement Agreement that has been executed separately by and between the parties;

**IT IS FURTHER ORDERED, with the consent of the parties,** that this Court retains jurisdiction over this matter for purposes of ensuring the proper enforcement of the injunctive

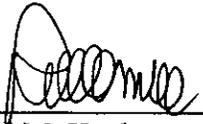
provisions set forth above;

This the 4<sup>th</sup> day of May, 2010.

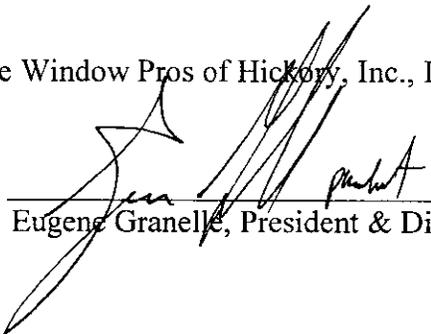
  
\_\_\_\_\_  
SUPERIOR COURT JUDGE

WE CONSENT:

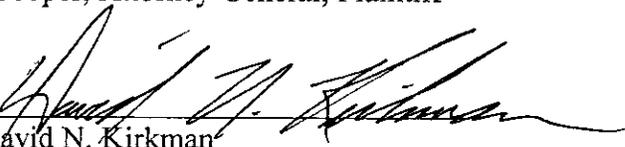
Richard M. Koch, P.A.,  
Attorneys for Defendant

By   
\_\_\_\_\_  
Richard M. Koch

The Window Pros of Hickory, Inc., Defendant

By   
\_\_\_\_\_  
Eugene Granelle, President & Director

State of North Carolina, *ex rel.*  
Roy Cooper, Attorney General, Plaintiff

By   
\_\_\_\_\_  
David N. Kirkman  
Assistant Attorney General

**§ 14-401.13. Failure to give right to cancel in off-premises sales.**

(a) It shall be a Class 3 misdemeanor for any sellers, as defined hereinafter, in connection with an off-premises sale, as defined hereinafter, willfully to:

- (1) Fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in boldface type of a minimum size of 10 points, a statement in substantially the following form: "You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."
- (2) Fail to furnish each buyer, at the time he signs the off-premises sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall be attached to the contract or receipt and easily detachable, and which shall contain in boldface type in a minimum size of 10 points, the following information and statements in the same language, e.g., Spanish, as that used in the contract:

"NOTICE OF CANCELLATION

(enter date of transaction)

\_\_\_\_\_ (date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk. In the event you purchased antiques at an antique show and cancel, and your residence is out-of-state, you must deliver the purchased goods to the seller.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram, to

\_\_\_\_\_ (name of seller)

at \_\_\_\_\_ (address of seller's place of business)

not later than midnight of \_\_\_\_\_ (date)

I hereby cancel this transaction.

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(buyer's signature)

- (3) Fail, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.
- (4) Fail to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.
- (5) Misrepresent in any manner the buyer's right to cancel.

(b) Regardless of the seller's compliance or noncompliance with the requirements of the preceding subsection, it shall be a Class 3 misdemeanor for any seller, as defined hereinafter, to willfully fail or refuse to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction. If the seller failed to provide a form Notice of Cancellation to the buyer, then oral notice of cancellation by the buyer is sufficient for purposes of this subsection.

(c) For the purposes of this section, the following definitions shall apply:

- (1) Off-Premises Sale. – A sale, lease, or rental of consumer goods or services with a purchase price of twenty-five dollars (\$25.00) or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. The term "off-premises sale" does not include a transaction:
- a. Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis; or
  - b. In which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act (15 U.S.C. 1635) or regulations issued pursuant thereto; or
  - c. In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days; or
  - d. Conducted and consummated entirely by mail or telephone; and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services; or
  - e. In which the buyer has initiated the contact and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the buyer's property. If in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this

exclusion; or

- f. Pertaining to the sale or rental of real property, to the sale of insurance or to the sale of securities or commodities by a broker-dealer registered with the Securities and Exchange Commission; or
  - g. Executed at an auction; or
  - h. Sales of motor vehicles defined in G.S. 20-286(10) by motor vehicle sales representatives licensed pursuant to G.S. 20-287 et seq.
- (2) Consumer Goods or Services. – Goods or services purchased, leased, or rented primarily for personal, family, or household purposes, including courses of instruction or training regardless of the purpose for which they are taken.
  - (3) Seller. – Any person, partnership, corporation, or association engaged in the off-premises sale of consumer goods or services. However, a nonprofit corporation or association, or member or employee thereof acting on behalf of such an association or corporation, shall not be a seller within the meaning of this section.
  - (4) Place of Business. – The main or permanent branch office or local address of a seller.
  - (5) Purchase Price. – The total price paid or to be paid for the consumer goods or services, including all interest and service charges.
  - (6) Business Day. – Any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and Good Friday. (1985, c. 652, s. 1; 1987, c. 551, ss. 1, 2; 1993, c. 141, c. 539, s. 282; 1994, Ex. Sess., c. 24, s. 14(c).)

**IN THE MATTER OF:**

**SETTLEMENT AGREEMENT**

**THE WINDOW PROS OF HICKORY, INC.,  
d/b/a THE WINDOW PROS**

This Settlement Agreement is entered into by Roy Cooper, Attorney General of the State of North Carolina (hereinafter "the Attorney General@), and The Window Pros of Hickory, Inc., which does business as "The Window Pros."

**I. PARTIES**

1. The Window Pros of Hickory, Inc. is a North Carolina corporation which has its principal place of business in Statesville, North Carolina. It does business under the name "The Window Pros." It sells and installs replacement windows, as well as performing other home improvement services for home owners.
2. The Attorney General is the North Carolina official empowered to enforce the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*, as well as several related marketing practices statutes.

**II. FACTUAL BACKGROUND**

3. In September of 2008, the Attorney General brought an enforcement action against The Window Pros of Hickory, Inc. (hereinafter, "The Window Pros") in Wake County Superior Court pursuant to authority found in the aforementioned Act. In that action, entitled State of North Carolina, ex rel. Roy Cooper, Attorney General, Plaintiff, versus The Window Pros of Hickory, Inc., Defendant (File No. 08 CVS 16289), the Attorney General alleged, among other things, that The Window Pros regularly failed to provide customers with written and verbal notification of their three-day rights to reconsider and cancel the sale, as set for in North Carolina General Statute § 14-401.13 and the Federal Trade Commission's Door-to-Door Sales Rule, 16 Code of Federal Regulations § 429.1.
4. The Attorney General further alleged in the aforesaid enforcement action that defendant and its employees engaged in various practices and tactics designed to thwart or prevent home owners from exercising their statutory cancellation rights. The Attorney General further alleged that The Window Pros and its employees engaged in threats and other pressure tactics designed to get home owners to cancel, waive or withdraw their decisions to cancel. The Attorney General alleged that these threats and pressure tactics, also, violated the North Carolina Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*, as well as the North Carolina Debt Collectors Act, N.C. Gen. Statute § 75-50, *et seq.*
5. One remedy the Attorney General sought under the aforesaid enforcement action was restitution to consumers who had been harmed by the practices of The Window Pros. Another remedy was the recovery of up to \$5000 in civil penalties for each violation of the Deceptive

Trade Practices Act and \$2000 for each violation of the Debt Collectors Act.

6. The Window Pros filed an Answer in the aforementioned enforcement action denying that it had violated any laws or regulations and denying further that any of its business practices were deceptive, oppressive or improper. It alleged further that any such practices that might have met those descriptions were the work of one Richard Farrant, an employee who was acting with neither the company's approval nor its authorization when he engaged in such practices. The Window Pros alleged further that Farrant's employment with The Window Pros was terminated as soon as his practices came to light.
7. The court referred the case to mediation pursuant to local court rules. Those mediation efforts did not conclude the matter.
8. The parties recently concluded settlement negotiations on their own. The results of those negotiations are set forth in this Settlement Agreement and the related documents attached hereto as exhibits.
9. By entering into this Settlement Agreement, neither side admits or implies that its allegations, claims or defenses in the aforesaid enforcement action lacked merit or that those of the opposing side possessed merit. Instead, they hereby stipulate that the resolution set forth herein represents a negotiated compromise designed to save the parties from the costly and unnecessary expenditures of time and resources necessary to prove their respective allegations, claims or defenses in court.

### **III. MUTUAL UNDERTAKINGS OF THE PARTIES**

Pursuant to the foregoing, and in consideration for the other parties' undertakings or waivers herein, the Attorney General and The Window Pros hereby bind themselves as follows:

10. Contemporaneously with the execution hereof, the Attorney General and The Window Pros will execute, and tender to the Court for approval and filing, a document terminating the aforesaid enforcement action. A copy of that document, entitled "Judgment by Consent and Agreed Permanent Injunction," is attached hereto as "Exhibit A."
11. Commencing on the first day of the calendar month that begins at least thirty days after the execution of this Agreement, The Window Pros shall pay to the State of North Carolina a total of Fifty Thousand Dollars (\$ 50,00.00) in 36 monthly installments. During the first twelve months, the monthly payment shall be Seven Hundred Dollars (\$ 700.00). During each of the final twenty-four months of this thirty-six month period, the payments shall be Seventeen Hundred and Thirty-Three Dollars and Thirty-Three Cents (\$ 1,733.33). The Window Pros will add Eight Cents to the final payment. These funds shall be collected and applied towards consumer restitution, attorneys' fees, costs, consumer education, enforcement, or other consumer protection purposes at the discretion of the Attorney General, except as provided herein.

12. Payments required herein shall be tendered to the State of North Carolina in care of David N. Kirkman, Assistant Attorney General (or his successor), Consumer Protection Division, N.C. Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629. (Street address for overnight courier deliveries: 114 W. Edenton Street, Raleigh, NC 27603)

13. All payments described in the two preceding paragraphs shall be in the form of a check or money order made payable to the "North Carolina Department of Justice.@

14. To ensure the proper and timely payment of the sums and the total described in the preceding three paragraphs, The Window Pros shall tender to the Attorney General, in care of the aforesaid Assistant Attorney General, a fully executed Confession of Judgment in favor of the State of North Carolina in the principal sum of Fifty Thousand Dollars (\$50,000.00). An unsigned copy of said Confession of Judgment is attached hereto as "Exhibit B." The Attorney General shall hold and not file the Confession of Judgment unless and until there is a default by The Window Pros in making any of the installment payments described herein. The Attorney General shall provide The Window Pros with two weeks' advance notice, in care of Attorney Richard M. Koch, of his intent to file the Confession of Judgment. After filing the Confession of Judgment in the appropriate courts, the Attorney General shall, as soon thereafter as practicable, note on pertinent Judgment Dockets any and all installment payments that have already been made by or on behalf of The Window Pros.

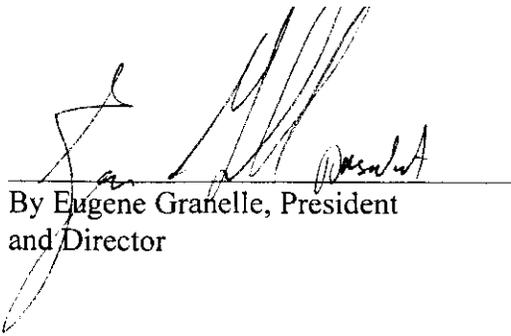
15. The Window Pros agrees that the Attorney General shall be solely responsible for any homeowner restitution or refund program employing funds received pursuant to this Agreement, provided, however, that any homeowner who receives restitution or partial restitution through the Attorney General must waive any and all legal claims that he or she might possess or assert against The Window Pros arising out of any transaction entered into with the company. This waiver shall be in writing and bear the homeowner's signature. The Attorney General shall promptly advise The Window Pros that particular homeowners have executed waivers and The Window Pros shall be entitled to a copy of any written waiver upon request.

16. With respect to acts or practices committed by The Window Pros prior to the execution hereof, the Attorney General shall not bring another enforcement action against the company based upon trade practices which were set forth in his claims for relief in the enforcement proceeding filed in Wake County Superior Court under file number 08 CVS 16289. The Attorney General and the State of North Carolina expressly reserve the right to bring proceedings to enforce this Settlement Agreement, the aforementioned Judgment By Consent and Agreed Permanent Injunction and the aforementioned Confession of Judgment, as well as the right to bring any other legal claim or enforcement proceeding not involving the subject matter of the aforesaid Wake County enforcement action.

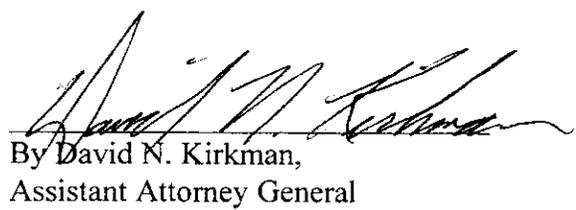
This the 30<sup>th</sup> day of April, 2010.

**The Window Pros of Hickory, Inc.**

**State of N.C., ex rel. Roy Cooper,  
Attorney General**



By Eugene Granelle, President  
and Director



By David N. Kirkman,  
Assistant Attorney General