

WUSINICH & SWEENEY, LLC
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Attorney for Plaintiff



BRIAN CALLERY	:	IN THE COURT OF COMMON PLEAS
57 West 5 th Avenue	:	CHESTER COUNTY, PENNSYLVANIA
Coatesville, PA 19320	:	
	:	
Plaintiff	:	CIVIL ACTION - LAW
vs.	:	
	:	
HOP ENERGY, LLC	:	
4 West Red Oak Lane, Suite 310	:	
White Plains, NY 10604	:	
and	:	
DDM ENERGY	:	
841 Lincoln Avenue	:	
West Chester, PA 19380	:	JURY OF TWELVE DEMANDED
	:	
Defendants	:	CLASS ACTION COMPLAINT

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney, and filing in writing with the court, your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Lawyer Referral and Information Services
Chester County Bar Association
15 West Gay Street
West Chester, PA 19380
(610) 429-1500

Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JURY OF TWELVE DEMANDED

CLASS ACTION COMPLAINT

2020-03904-CT

2. Defendant HOP Energy, LLC (“HOP Energy”) is a limited liability company organized and existing under the laws of the State of Delaware. Its principal place of business is at 4 West Red Oak Lane, Suite 310, White Plains, NY 10604. HOP Energy does business in Chester County, Pennsylvania through its office located at 841 Lincoln Ave, West Chester, PA 19380.

3. HOP Energy provides residential and commercial heating oil and services to customers in Pennsylvania, Vermont, Massachusetts, Rhode Island, Connecticut, New Jersey, Delaware and New York. HOP Energy has nearly one hundred thousand customers.

4. Defendant DDM Energy (“DDM”) is a business entity doing business in Chester County, Pennsylvania through its office located at 841 Lincoln Ave, West Chester, PA 19380. DDM’s mailing address is P.O. Box 596, West Chester, PA 19381-0596. DDM is an affiliate, subsidiary or fictitious name for HOP Energy.

5. DDM provides residential and commercial heating oil and services to thousands of customers in the Chester, Bucks, Delaware and Philadelphia County areas.

Events Giving Rise to This Claim

6. Defendants advertise to the public on their website that they provide residential heating oil under three different pricing plans, Variable, Capped and Fixed. Defendants describe the Capped plan to the public as follows: “CAPPED – your home heating oil price follows the market but doesn’t go above your CAP rate.” Defendants describe the Fixed plan to the public as follows: “FIXED – your price does not change, and you can manage your home heating oil budget to this predictable monthly amount.”

7. Defendants advertise to the public on their website that: “At HOP Energy, our buying power across the northeast gives us access to the region’s largest oil supply network and storage facilities, which means we have a consistent supply of home heating oil at competitive prices.”

8. On April 2, 2020 Plaintiff entered into a contract with Defendants for provision of heating oil to Plaintiff’s residence (the “Contract.”). See Exhibit A.

9. Pursuant to the Contract, Plaintiff and Defendants agreed that for the period from April 2, 2020 to April 30, 2021, Defendants would provide, and Plaintiff would pay for, heating oil under a Capped Price Program. Defendants agreed to provide up to one thousand gallons of heating oil to Plaintiff at a price not to exceed \$2.099/gallon, plus applicable taxes. Defendants promised that “if our prevailing retail price for home heating oil drops below the Capped Price during the Pricing Period, then you (i.e., Plaintiff) will pay our prevailing retail price for home heating oil.”

10. On May 19, 2020 Defendants provided Plaintiff with 54 gallons of heating oil. Defendants charged Plaintiff \$113.35, at the rate of \$2.099/gallon.

11. Immediately after this oil delivery, Plaintiff telephoned Defendants and asked what their prevailing retail price for heating oil was. Defendants’ agent who answered the telephone answered that Defendants’ prevailing retail price for oil was \$1.55/gallon. When Plaintiff stated that he was under contract and wanted to know why he was charged \$2.099/gallon for heating oil, Defendants’ agents transferred the call several times until a woman representative of Defendants informed him that Defendants’ prevailing retail price for oil was \$2.49/gallon. Plaintiff questioned why the first representative who answered the phone told him that the prevailing retail price for heating oil was \$1.55/gallon. Defendants’ representative responded that they were the sales department and did not know what the prevailing retail price of oil was.

12. Plaintiff believes and therefore avers that Defendants knew at the time they entered into the Contract that they did not intend to honor their promise to charge Plaintiff the actual prevailing retail price for heating oil, but rather had engaged in a scheme where they created a false, inflated “prevailing retail price” which they quoted to Capped Plan customers instead of the actual prevailing retail price (the “Fake Retail Price”). The Fake Retail Price bore no relation to the retail prices Defendants or other providers in the market actually quoted or charged for heating oil.

13. Plaintiff believes and therefore avers that Defendants signed numerous customers to contracts similar to Plaintiff’s Contract, in which Defendants agreed to provide heating oil under the Capped Price Program. Plaintiff avers that Defendants have overcharged numerous customers under Capped Price Program contracts at their Capped Price or another artificially inflated price, instead of the actual prevailing retail price to which customers were entitled under their contracts.

14. Defendants’ representation to the public that under their Capped Price Program “your home heating oil price follows the market but doesn’t go above your CAP rate” was false and was a fraudulent inducement to enter into Capped Price Program contracts with Defendants.

Class Action Allegations

15. Plaintiff brings this action as a class action pursuant to Pennsylvania Rules of Civil Procedure 1702, 1708 and 1709 on behalf of the following class: All persons who entered into contracts with Defendants for the delivery of heating oil to a residence, under terms including a capped pricing program and/or a prevailing retail price for the price of the heating oil, and who received delivery of heating oil during the time period commencing six years before the filing date of this action (the “Class Members”).

16. Plaintiff requests that the class be divided into sub-classes of (1) those Class Members who are residents of Pennsylvania (the “Resident Class”); and (2) those Class Members who are not residents of Pennsylvania (the “Non-Resident Class”). As to the Non-Resident Class, Plaintiff intends to see certification of an opt-in class pursuant to Pa.R.Civ.P. 1711(b).

17. The prerequisites to class certification under Pa.R.Civ.P. 1702 are met in that:

18. The members of the class are so numerous that joinder of all members is impractical. Plaintiff estimates that there are tens of thousands of Class Members. The precise number of Class Members may be determined from the Defendants’ records.

19. The representative Plaintiff’s claims raise questions of law and fact common to all Class Members. Among the questions of law and fact common to the class are the following:

a. whether Defendants’ advertising of their heating oil programs was false, deceptive and confusing to the public;

b. whether Defendants’ representation to Class Members that, under Defendants’ Capped price heating oil contract, their home heating oil price follows the market but doesn’t go above their CAP rate, was false, deceptive and confusing;

c. whether Defendants knew at the time they entered into heating oil contracts with the members of the class that the term “prevailing market price” was false, deceptive and intended to confuse the Class Members;

d. whether Defendants knew at the time they entered into contracts with the Class Members that they did not intend to honor their promise to charge Class Members the actual prevailing retail price for heating oil, but rather had engaged in a scheme where they created a false, inflated “prevailing retail price” which they quoted and/or charged to customers instead of the actual prevailing retail price (the “Fake Retail Price”);

e. whether the Fake Retail Price bore no relation to the retail prices Defendants or other providers in the market actually charged for heating oil and/or quoted to the public when potential customers inquired as to Defendants' prices for heating oil;

f. whether the Defendants concealed the Fake Retail Price scheme from customers and potential customers, including Class Members;

g. whether Defendants have engaged in fraudulent or deceptive conduct which created a likelihood of confusion or of misunderstanding;

h. whether Defendants breached their contracts with members of the class by failing to charge the lesser of the Capped price or the prevailing market price;

i. whether Defendants acted honestly and in good faith and fair dealing;

j. whether Defendants engaged in wanton and outrageous conduct toward the Class Members.

20. The claims of the representative Plaintiff are typical of, if not identical to, the claims of each member of the class because the representative Plaintiff and all Class Members entered into the same or similar contracts with Defendants, and received the same false, deceptive and confusing communications from Defendants regarding the Capped Price contract and the prevailing market price for heating oil.

21. The representative Plaintiff will fairly and adequately protect the interests of all of the Class Members. He has retained competent counsel who are experienced in complex litigation and who will prosecute this action vigorously. The representative Plaintiff will fairly and adequately assert and protect the interests of the class. He does not have any interests antagonistic to the interests of the class. Representative Plaintiff has adequate financial resources to vigorously

pursue this action, including an agreement by his counsel to prosecute this action on a contingent fee basis and to advance the reasonable and necessary costs and expenses of litigation.

22. A class action provides a fair and efficient method for adjudication of the controversy pursuant to Pa.R.Civ.P. 1702(5) and 1708.

23. Common questions of law and fact predominate over individual questions: The questions of law and fact common to the Class Members predominate over any questions affecting only individual members.

24. The size of the class and likely difficulties in managing a class action: Plaintiff believes that there are tens of thousands of Class Members, and their claims are virtually identical. The class presents no unusual management difficulties.

25. The risks of separate actions: The prosecution of separate actions by individual members of the class would, as a practical matter, impair or impede the ability of others who are not parties to the individual actions to protect their interests, and Defendants could be confronted with inconsistent standards of conduct.

26. The nature and extent of any litigation concerning the controversy already begun by or against Class Members: To Plaintiff's knowledge, there is no other litigation concerning this controversy.

27. The appropriateness of this forum for resolving claims of this class: This forum is appropriate because Plaintiff resides in this county and Defendants conduct business in this forum. There is no more appropriate forum for this action.

28. Complexity and expense of separate actions: The complexity of the issues and the expenses of discovery and litigating individual claims make it likely that a substantial number of Class Members would not, as a practical matter, be able to prosecute their claims.

29. Substantial recoveries by Class Members: The damages that may be recovered by individual Class Members will not be so small as not to justify a class action.

30. As to the Counts seeking declaratory and injunctive relief, a class action provides a fair and efficient method for adjudicating the controversy and may be maintained as a class action because all the prerequisites of Pa.R.Civ.P 1708(1) through (5) are satisfied and because Defendants have acted or refused to act on grounds that apply generally to the class so that final declaratory relief is appropriate for the class as a whole.

COUNT ONE -- BREACH OF CONTRACT

31. Plaintiff incorporates the foregoing allegations as if set forth herein at length.

32. Defendants have breached their contract with Plaintiff and the Class Members.

33. Plaintiff and the Class Members have incurred damages as a result of Defendants' breach of contract.

WHEREFORE, Plaintiff requests that the Court enter judgment in his favor (1) enjoining Defendants from further breach of Plaintiff's contract; and (2) award damages in an amount in excess of \$50,000.00, together with costs, and such other relief as the Court deems just and proper.

**COUNT TWO -- BREACH OF
COVENANT OF GOOD FAITH AND FAIR DEALING**

34. Plaintiff incorporates the foregoing allegations as if set forth herein at length.

35. Defendants have breached their covenant of good faith and fair dealing with Plaintiff and the Class Members.

36. Plaintiff and the Class Members have incurred damages as a result of Defendants' breach of the covenant of good faith and fair dealing.

WHEREFORE, Plaintiff requests that the Court enter judgment in his favor (1) enjoining Defendants from further breach of the covenant of good faith and fair dealing; and (2) award

damages in an amount in excess of \$50,000.00, together with costs, and such other relief as the Court deems just and proper.

COUNT THREE -- FRAUD

37. Plaintiff incorporates the foregoing allegations as if set forth herein at length.

38. Defendants have made false statements of fact, including the statement that under their Capped Price plan customers' heating oil price follows the market; the statement that Defendants charged competitive prices for heating oil; the statement that Defendants would charge Plaintiff and Class Members the lesser of their Capped Rate or the prevailing market price for heating oil; the statement that Defendants' prevailing market price for heating oil was \$2.49/gallon; and the statement that Defendants' sales employees did not know the prevailing market price of heating oil. In addition, Defendants fraudulently concealed their intention to charge Class Members far higher than prevailing market prices for heating oil.

39. Defendants intended to deceive the Class Members by means of these statements and concealment and did deceive Class Members. Class Members justifiably relied on Defendants' fraudulent statements to their detriment and sustained damages as a result.

40. Plaintiff and the Class Members are entitled to punitive damages.

WHEREFORE, Plaintiff requests that the Court enter judgment in his favor (1) enjoining Defendants from further fraudulent conduct; and (2) awarding compensatory and punitive damages in an amount in excess of \$50,000.00, together with costs, statutory interest and such other relief as the Court deems just and proper.

**COUNT FOUR -- RESIDENT CLASS VERSUS DEFENDANTS --
VIOLATION OF PENNSYLVANIA UNFAIR TRADE PRACTICES
AND CONSUMER PROTECTION LAW**

41. Plaintiff incorporates the foregoing allegations as if set forth herein at length.

42. Defendants have engaged in fraudulent or deceptive conduct which created a likelihood of confusion or of misunderstanding.

43. Pursuant to Section 201-9.2 of the Pennsylvania Unfair Trade Practices and Consumer Protection Law (the “Act”), Plaintiff and the Resident Class Members have purchased goods or services from Defendants primarily for personal, family and household use, and have suffered ascertainable loss of money or property as a result of Defendants’ violation of the Act.

44. Plaintiff and the Resident Class Members are entitled to recover actual damages or one hundred dollars, whichever is greater, as well as treble damages, costs and reasonable attorneys’ fees.

WHEREFORE, Plaintiff requests that the Court enter judgment in his favor (1) enjoining Defendants from further violation of the Act; and (2) awarding compensatory, punitive, statutory and treble damages in an amount in excess of \$50,000.00, together with costs, attorneys’ fees, statutory interest and such other relief as the Court deems just and proper.

**COUNT IV – VIOLATION OF NEW YORK
CONSUMER PROTECTION LAW**

45. Plaintiff incorporates the foregoing allegations as if set forth herein at length.

46. Defendants have engaged in deceptive acts or practices in the conduct of their business in violation of the New York Consumer Protection Law, New York Gen Bus L § 349 (“NY CPL”).

47. Plaintiff and the Class Members are entitled to recover actual damages or fifty dollars, whichever is greater, as well as treble damages, attorneys’ fees and costs, pursuant to the NY CPL.

WHEREFORE, Plaintiff requests that the Court enter judgment in his favor (1) enjoining Defendants from further violation of the NY CPL; and (2) awarding compensatory, punitive and

treble damages in an amount in excess of \$50,000.00, together with costs, attorneys' fees, statutory interest and such other relief as the Court deems just and proper.

COUNT V -- NON-RESIDENT CLASS VERSUS DEFENDANTS
(VIOLATION OF STATE CONSUMER PROTECTION LAWS)

48. Plaintiff incorporates the foregoing allegations as if set forth herein at length.

49. Defendants have engaged in fraudulent or deceptive conduct which created a likelihood of confusion or of misunderstanding.

50. The Non-Resident Class Members have purchased goods or services from Defendants primarily for personal, family and household use, and have suffered ascertainable loss of money or property as a result of Defendants' conduct.

51. Defendants have violated the Connecticut Unfair Trade Practices Act, 42 Conn. G.S. Ch. 735a.

52. Defendants have violated the Delaware Uniform Deceptive Trade Practices Act, 6 Del.L. Ch. 25.

53. Defendants have violated the Massachusetts Consumer Protection Law, M.G.L. Ch. 93A.

54. Defendants have violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-2.

55. Defendants have violated the Rhode Island Deceptive Trade Practices Law, R.I.G.L. Title 6 § 6-13.1.1.

56. Defendants have violated the Vermont Consumer Protection Act, 9 V.S.A. § 2451-2482d.

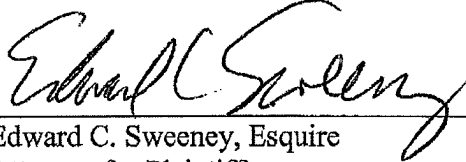
57. The Non-Resident Class Members are entitled to recover actual damages and other relief as set forth in the consumer protection laws of their states of residence, as well as costs and reasonable attorneys' fees.

WHEREFORE, Plaintiff requests that the Court enter judgment in his favor (1) enjoining Defendants from further violation of the consumer protection laws; and (2) awarding compensatory, punitive and statutory multiplied damages in an amount in excess of \$50,000.00, together with costs, attorneys' fees, statutory interest and such other relief as the Court deems just and proper.

Respectfully submitted,

WUSINICH & SWEENEY, LLC

Date: 06/22/2020

By: 
Edward C. Sweeney, Esquire
Attorney for Plaintiffs