

Complaint

IN THE MATTER OF

A WALDRON HVAC, LLC
D/B/A
WALDRON ELECTRIC HEATING AND COOLING, LLC,
AND
THOMAS J. WALDRON

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT AND SECTION 2 OF THE CONSUMER REVIEW FAIRNESS ACT

Docket No. C-4680; File No. 182 3077
Complaint, June 19, 2019 – Decision, June 19, 2019

This consent order addresses A Waldron HVAC, LLC's use of non-disparagement provisions in consumer form contracts in the course of selling their electrical, heating, and cooling services. The complaint alleges that the respondents violated Section 2(c) of the Consumer Review Fairness Act ("CRFA") by offering to consumers form contracts that contained non-disparagement provisions made void by Section 2(b) of the CRFA. The consent order prohibits, in the sale or leasing of any good or service, the respondents from: offering to any prospective customer a contract, or offering to any customer a renewal contract, that includes a review-limiting term; requiring that a customer accept such a term as a condition of the respondents' fulfillment of their obligations under contracts entered into before the effective date of the order; or attempting to enforce or assert the validity of such a term in customer contracts entered into before the effective date of the order.

Participants

For the *Commission*: Carl H. Settlemyer.

For the *Respondents*: Gregory A. Castelli, solo practitioner.

COMPLAINT

The Federal Trade Commission, having reason to believe that A Waldron HVAC, LLC and Thomas J. Waldron, individually and as an owner and manager of A Waldron HVAC, LLC (collectively, "Respondents"), have violated the Consumer Review Fairness Act of 2016, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent A Waldron HVAC, LLC (also d/b/a Waldron Electric Heating and Cooling, LLC) ("Waldron Electric") is a Pennsylvania limited liability company with its principal office or place of business at 500 Regis Avenue #18415, Pittsburgh, Pennsylvania 15236. Waldron Electric provides electrical, heating, and cooling services.

2. Respondent Thomas J. Waldron is an owner and manager of Waldron Electric. Individually or in concert with others, he controlled or participated in the acts and practices of Waldron Electric, including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of Waldron Electric.

Complaint

3. The acts and practices of Respondents alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

Course of Conduct

4. From at least August 2014 through April 15, 2018, Respondents used, in their form contracts offered to prospective customers in the course of selling their goods and services, the following provision:

CUSTOMER and COMPANY agree that the within contract is a private and confidential matter and that the terms and conditions of the contract, including the estimates and all pricing shall remain private and confidential and shall not be made public, or given to anyone to make public, INCLUDING THE BETTER BUSINESS BUREAU. Customer also agrees not to file any complaints with the Better Business Bureau, and agrees to attempt to resolve their complaints by contacting COMPANY in writing directly. Should the CUSTOMER breach this confidentiality clause, the CUSTOMER agrees to pay COMPANY liquidated damages equal to the actual amount of damages suffered or two times the contract price, whichever shall be higher. **THE COMPANY MAY ALSO BE AWARDED COUNCIL [sic] FEES AND COSTS AS REQUESTED BY COMPANY.**

A copy of the Waldron Electric “Trip Fee – Diagnostic – Misc. Agreement” that includes this language is attached as Exhibit A hereto. Respondents’ form contracts were in effect on or after December 14, 2017.

VIOLATION OF THE CONSUMER REVIEW FAIRNESS ACT

5. The Consumer Review Fairness Act of 2016 (“CRFA”), Pub. L. No. 114-258, 15 U.S.C. § 45b, was enacted on December 14, 2016. As of March 14, 2017, Section 2(b) of the CRFA renders void, and Section 2(c) of the CRFA prohibits the offering of, provisions in form contracts that: prohibit or restrict individual consumers’ ability to communicate reviews, performance assessments, and similar analyses about a seller’s goods, services, or conduct; or that impose a penalty or fee against individual consumers who engage in such communications. 15 U.S.C. §§ 45b(a)(2), 45b(b)(1), and 45b(c).

6. The Commission is authorized to enforce Section 2(c) of the CRFA in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act, 15 U.S.C. §§ 41-58, were incorporated into and made a part of the CRFA. 15 U.S.C. § 45b(d)(2)(A). The Commission’s enforcement authority under the CRFA applies to contracts in effect on or after December 14, 2017. 15 U.S.C. § 45b(i)(2).

Complaint

7. Pursuant to 15 U.S.C. § 45b(d)(1), a violation of 15 U.S.C. § 45b(c) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under Section 18(a)(1)(B) of the FTC Act, 15 U.S.C. § 57a(a)(1)(B).

Count I

8. As described in Paragraph 4 of this Complaint, Respondents have offered, in the course of selling their goods and services, form contracts, as that term is defined in 15 U.S.C. § 45b(a)(3), that contained a provision made void by 15 U.S.C. § 45b(b)(1).

9. Therefore, the acts and practices set forth in Paragraph 4 of this Complaint occurring on or after March 14, 2017 violated Section 2(c) of the CRFA, 15 U.S.C. § 45b(c).

THEREFORE, the Federal Trade Commission this nineteenth day of June, 2019, has issued this Complaint against Respondents.

By the Commission.

Complaint

Exhibit A

COMPLAINT EXHIBIT A, ETC 182-3077

 WALDRON ELECTRIC HEATING AND COOLING "THE MOST RELIABLE 24 HR ELECTRICIANS IN THE BURGH!" 1-800-349-9555 Mailing Address & Deliveries: 500 Regis Avenue #18415 • Pittsburgh, PA 15236 PA STATE LICENSED ELECTRICAL INSPECTOR # 002891 Electrical License #04412 • HVAC License #01630 Customer _____ Address _____ Date _____ ☐ 412 ☐ 724 ☐ 412 ☐ 724 Phone: _____ Cell: _____ Reason For Service: _____ _____ _____ Final Pmt. Method: Charge \$: _____ Cash \$: _____ CC #: _____ Exp.: _____ CID #: _____ Auth #: _____ TASK #1: VOID TASK #2: ATTORNEY COPY TASK #3: 4/18 <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">Trip Fee: \$</td> <td style="width: 33%;">Task #1: \$</td> <td style="width: 33%;">* Co. Administrative \$</td> </tr> <tr> <td>Misc. Fees: \$</td> <td>Task #2: \$</td> <td>* Filing Fees \$</td> </tr> <tr> <td>Misc. Fees: \$</td> <td>Task #3: \$</td> <td>* Donations: \$</td> </tr> <tr> <td colspan="2"></td> <td>Total Charges: \$</td> </tr> </table> Signature: _____ I/WE APPROVE Sign here if satisfied with work performed and you agree you knew all prices in advance.) px. Start Date: Today Apx. Completion Date: Today T.I. _____ TECH: _____	Trip Fee: \$	Task #1: \$	* Co. Administrative \$	Misc. Fees: \$	Task #2: \$	* Filing Fees \$	Misc. Fees: \$	Task #3: \$	* Donations: \$			Total Charges: \$	TRIP FEE • DIAGNOSTIC • MISC. AGREEMENT Initial Here: X \$_____ For trip charge to arrive at establishment only. If work requested requires technician to diagnose a problem, additional cost for diagnostic will be quoted. If repairable, additional cost will be quoted for repair. All costs are quoted in advance and will be initiated by client before work is started for each fee. We agree these terms were disclosed in the initial phone call & prior to technician(s) arrival. We charge and buyer agrees to pay \$_____ Repair fee for each reset, tripped item, bad fuse, bulb, or furnace relight. No Guarantee Technician can find or correct the problem(s). \$_____ Trip fee will be waived if installation work is accepted. (Emergency service trip fee not waived.) Initial Here: X I agree to pay for all work, goods, and services rendered, and hereby further authorize Company and any of their agents the release of my consumer credit report at any time from any reporting credit bureau agency upon demand. A service charge of 1 to 1-1/2% per month (18% per annum) will be charged on all balances 90 days or more past due. PA REG. # 2587 Signature: _____ 500 Bessieville Rd., 28 Ave • Pittsburgh, PA 15227 "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. IF THE EMERGENCY AUTHORIZATION WAIVER HAS BEEN SIGNED, YOU HAVE WAIVED YOUR RIGHT TO CANCEL." "Excludes Commercial Transactions." NO 31864
Trip Fee: \$	Task #1: \$	* Co. Administrative \$											
Misc. Fees: \$	Task #2: \$	* Filing Fees \$											
Misc. Fees: \$	Task #3: \$	* Donations: \$											
		Total Charges: \$											

THANK YOU FOR NOT SMOKING • ALL SALES ARE FINAL • NO REFUNDS

FEDERAL TRADE COMMISSION DECISIONS
VOLUME 167

Complaint

WORK ADDRESS

The CUSTOMER does hereby employ the COMPANY to render services and furnish materials hereinafter referred to as WORK for the property described on the face of the CONTRACT, to the extent and kind defined therein. CUSTOMER represents and warrants that he has title to the property to be worked on by the COMPANY and/or is authorized to hire the COMPANY to perform the WORK identified on the face of the CONTRACT. COMPANY agrees to perform the following WORK for and at the request of CUSTOMER as described on the face of the CONTRACT.

PAYMENT

All work is done on a FLAT RATE basis. The price includes materials, labor, and taxes. NO BREAKDOWN WILL BE PROVIDED except for residential only, as required by the PA HICPA, sec. 517.7(a)(9).

The CUSTOMER shall pay to the COMPANY for performance of the WORK and furnishing materials and completion of project subject to additions and deductions as provided therein according to the amount stated on the face of the contract. Payment in full is due at the time of the performance of the work unless otherwise agreed upon in writing and signed by both COMPANY and CUSTOMER.

MATERIALS, SUPPLIES, LIMITED WARRANTY, INSURANCE, AND EXTRA WORK

The COMPANY will furnish all labor, materials, supplies and equipment necessary to perform the services herein described. All materials furnished are subject to manufacturer's warranties. **LABOR AND WORKMANSHIP IS WARRANTED BY COMPANY FOR A PERIOD OF ONE YEAR, AND MATERIALS ARE GUARANTEED IN ACCORDANCE WITH THE MANUFACTURER'S WARRANTIES** or representations whatsoever with respect to the materials or equipment manufactured by others. The parties further agree that no warranties, written or oral, statutory, expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, shall apply to the equipment or materials except such warranties which may extend from and are solely recoverable against the manufacturer. Further said warranties of COMPANY do not commence until COMPANY has been paid in full for the WORK pursuant to this agreement. We make no guarantees you will have coverage or reimbursement from any insurance company, we do not deal with insurance companies in connections to any of our contracts, no warranties or guarantees on diagnostic work. If it is discovered when diagnosing, there are multiple defects, we reserve the right to charge for additional diagnostic work and/or repair costs. Each diagnostic fee is charged per defect discovered.

If, during the progress of the WORK, the CUSTOMER finds it desirable or necessary to cause the COMPANY to perform additional services and/or any alteration or deviation from the WORK other than that defined in the description of work contained herein or within any separate proposal, such ADDITIONAL WORK must be authorized in writing and detailed in a separate contract describing the ADDITIONAL WORK, the payment amount and terms.

AIR CONDITIONING WORK

IF WE CHARGE, REFILL, OR REPAIR BY ADDING REFRIGERANT TO YOUR EXISTING AIR CONDITIONING SYSTEM, THIS INDICATES THE SYSTEM MAY HAVE A LEAK. THERE IS NO WARRANTY ON THIS TYPE OF REPAIR. WE DO NOT GUARANTEE EXISTING SYSTEMS FOR LEAKS.

CANCELLATION / LIQUIDATED DAMAGES

If the three day rescission period has passed or if the Emergency Work Authorization agreement has been signed authorizing the performance of services by the COMPANY, CUSTOMER may not cancel the Agreement. If CUSTOMER signs this Agreement and CUSTOMER later cancels, in breach of this Agreement, COMPANY shall be entitled to Liquidated Damages in lieu of all other claims and damages as follows:

- (a) If cancellation occurs prior to the start of any work, then COMPANY shall be entitled to twenty-five (25%) percent of the Job Total agreed upon.
- (b) If cancellation occurs when work has commenced and is less than fifty (50%) percent complete, then COMPANY shall be entitled to 50% of the Job Total agreed upon.
- (c) If cancellation occurs when work has commenced and is more than fifty (50%) percent complete, then COMPANY shall be entitled to the entire Job Total agreed upon.

CONFIDENTIALITY CLAUSE

CUSTOMER and COMPANY agree that the within contract is a private and confidential matter and that the terms and conditions of the contract, including the estimates and all pricing shall remain private and confidential and shall not be made public, or given to anyone to make public, INCLUDING THE BETTER BUSINESS BUREAU. Customer also agrees not to file any complaints with the Better Business Bureau, and agree to attempt to resolve their complaints by contacting COMPANY in writing directly. Should the CUSTOMER breach this confidentiality clause, the CUSTOMER agrees to pay COMPANY liquidated damages equal to the actual amount of damages suffered or two times the contract price, whichever shall be higher. **THE COMPANY MAY ALSO BE AWARDED**

COUNCIL FEES AND COSTS AS REQUESTED BY COMPANY.**SPECIAL CONDITIONS**

OWNER recognizes and agrees that COMPANY shall not be responsible for any damage to plaster, drywall, or other such surfaces and for paint or other surface coatings affected thereof as a result of conventional repair efforts on the part of the COMPANY or aged or deteriorated wiring, piping, and apparatus.

VENUE

In the event of a conflict and or dispute regarding this contract exclusive jurisdiction for any and all disputes shall be in the Court of Common Pleas of Allegheny County, Pennsylvania. Company reserves the right to initiate any and all litigation which company deems appropriate at Magisterial District Court 05-2-26.

EXCAVATION

In the event excavation is required as part of the WORK, and COMPANY experiences unusual circumstances, such as rock, roots, or frozen earth, that must be removed by other than hand labor, then COMPANY may charge, and CUSTOMER agrees to pay, any additional expenses incurred by COMPANY in completing the excavation necessary to perform the WORK as outlined on the face of the CONTRACT. It is mutually agreed that all landscaping and grass reseeding is to be done by others than COMPANY and at the customer's expense 100%.

*** COMPANY ADMINISTRATIVE + FILING FEES**

The fees being charged to the CONSUMER for this item include but are not limited to any and all costs to the COMPANY for the processing of any and all permits, dealings with utility companies, inspectors and/or inspection processing as well as any and all costs associated with obtaining the necessary paperwork and following up. It also includes, but is not limited to, all administrative costs for scheduling and following up with the permits, inspectors and inspections and can include costs for time necessary to obtain lookup numbers if applicable and handling for processing any necessary clerical items. Administrative costs may also include such things as plan reviews, meetings with inspectors, parking and/or postage, COMPANY administrative labor, etc.

MISCELLANEOUS PROVISIONS

(a) Attorneys Fees and Costs: If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, or it is determined that the CUSTOMER IS IN BREACH OF SAME THEN THE **CUSTOMER ACKNOWLEDGES THAT THE COMPANY WILL SEEK AND MAY BE ENTITLED TO ALL OF ITS ATTORNEY'S FEES, COSTS AND NECESSARY DISBURSEMENTS IN ADDITION TO ANY OTHER RELIEF TO WHICH THE COMPANY MAY BE ENTITLED.** (a-1) CUSTOMER AGREES TO MAKE DWELLING FULLY ACCESSIBLE. DUE TO LIABILITY, COMPANY DOES NOT MOVE ITEMS.

(b) OWNER **MAY** be liable for all cost and fees incurred by COMPANY in the collection of outstanding balance due to COMPANY by OWNER.

(c) Parties Bound: This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.

(d) Prior Agreements Superseded: This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.

(e) Legal Construction: If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

(f) Assignment: Neither this Agreement nor any duties or obligations under this Agreement shall be assignable by CUSTOMER without the prior written consent of COMPANY. In the event of an assignment by CUSTOMER to which COMPANY has consented, the Assignee or the Assignee's representative shall agree in writing with COMPANY to personally assume, perform, and be bound by the covenants, obligations, and Agreements contained in this Agreement.

(g) Amendment: This Agreement may be amended by the mutual agreement of the contracting parties in a writing to be attached to and incorporated into this Agreement.

(h) CUSTOMER/BUYER agrees to give the COMPANY the opportunity to rectify any problems, code violations or changes recommended by any authority having jurisdiction before initiating any legal action or initiating any charge back from any credit card or form of payment. In addition, you the buyer agree to permit COMPANY back into your dwelling to finish any work that needs completed, or adjusted, or the buyer shall be in breach of the contract.

(i) Contractor maintains insurance covering property damage of \$1 million and personal injury insurance coverage of \$1 million.

(j) Customer agrees to let COMPANY 100% allocate any donation funds to any business, charity, entity, firm, or/and organization of COMPANY'S choosing.

THE PRICES, SPECIFICATIONS AND CONDITIONS ARE SATISFACTORY AND ARE HEREBY ACCEPTED. CUSTOMER HAS READ THIS AGREEMENT AND RECEIVED A COPY. COMPANY IS AUTHORIZED TO DO THE WORK AS SPECIFIED. PAYMENT WILL BE MADE AS AGREED. I/WE HAVE READ AND UNDERSTAND THE AGREEMENTS THAT HAVE BEEN PRESENTED TO US WITH THIS FORM.

Signature: _____

Signature: _____

Decision and Order

DECISION

The Federal Trade Commission (“Commission”) initiated an investigation of certain acts and practices of the Respondents named in the caption. The Commission’s Bureau of Consumer Protection (“BCP”) prepared and furnished to Respondents a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondents with violations of the Consumer Review Fairness Act of 2016.

Respondents and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondents that they neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, they admit the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the Consumer Review Fairness Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered any comments received from interested persons pursuant to Section 2.34 of its Rules, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. The Respondents are:
 - a. A Waldron HVAC, LLC, also d/b/a Waldron Electric Heating and Cooling, LLC, a Pennsylvania limited liability company with its principal office or place of business at 500 Regis Avenue #18415, Pittsburgh, Pennsylvania 15236.
 - b. Thomas J. Waldron, an owner and manager of A Waldron HVAC, LLC. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of A Waldron HVAC, LLC. His principal office or place of business is the same as that of A Waldron HVAC, LLC.
2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

Decision and Order

ORDER**Definitions**

For purposes of this Order, the following definitions apply:

- A. “Covered Communication” means a written, oral, or Pictorial review, performance assessment, or other similar analysis of goods or services, including conduct related to the goods or services.
- B. “Review-Limiting Contract Term” means a standardized contract term that:
 - 1. prohibits or restricts the ability of a person who is a party to the contract to engage in a Covered Communication;
 - 2. imposes a penalty or fee against a person who is a party to the contract for engaging in a Covered Communication; or
 - 3. transfers, or requires a person who is a party to the contract to transfer, to any other person any intellectual property rights in a Covered Communication, with the exception of a non-exclusive license to lawfully use a Covered Communication about a Respondent’s goods or services.
- C. “Pictorial” includes pictures, photographs, video, illustrations, and symbols.
- D. “Respondents” means A Waldron HVAC, LLC and Thomas J. Waldron, individually or collectively.
 - 1. “Corporate Respondent” means A Waldron HVAC, LLC, a limited liability company, and its successors and assigns.
 - 2. “Individual Respondent” means Thomas J. Waldron.

Provisions**I. Prohibited Use of Review-Limiting Contract Terms**

IT IS ORDERED that Respondents, and Respondents’ members, managers, officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the sale or leasing of any good or service, must not:

- A. offer to any prospective customer a contract, or offer to any customer a renewal contract, that includes a Review-Limiting Contract Term;

Decision and Order

- B. require that a customer accept a Review-Limiting Contract Term as a condition of any Respondent's fulfillment of its obligations under a customer contract that a Respondent entered into before the effective date of this Order; or
- C. attempt to enforce or assert the validity of any Review-Limiting Contract Term in any customer contract that a Respondent entered into before the effective date of this Order.

Nothing in this Provision shall require a Respondent to publish or host the content of any person, affect any other legal duty of a party to a contract, or affect any cause of action arising from the breach of such duty.

II. Notice to Consumers

IT IS FURTHER ORDERED that each Respondent must, within 30 days after the effective date of this Order, notify all customers who entered into a contract with any Respondent that included any term concerning a Covered Communication, such as Respondents' "Trip Fee – Diagnostic – Misc. Agreement," used on or after March 14, 2017 through April 15, 2018, by mailing or emailing each a notice as shown in Attachment A:

- A. The heading of the notice and the subject line for any email must read "Your Right to Post Honest Reviews."
- B. The Respondent's name and return address for any mailing must appear on the front of the envelope, the customer's name and address must be printed on the front of the envelope or be visible through a window in the envelope, and the words "Your Right to Post Honest Reviews" must be printed in easily noticed text near the customer's name and address.
- C. The notice must not include any other materials or message about a Respondent, or otherwise concern its goods or services.

III. Acknowledgments of the Order

IT IS FURTHER ORDERED that Respondents obtain acknowledgments of receipt of this Order:

- A. Each Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 3 years after the issuance date of this Order, Individual Respondent for any business that he, individually or collectively with Corporate Respondent, owns a majority of or controls directly or indirectly, and Corporate Respondent, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for

Decision and Order

drafting, approving, or enforcing customer contracts, or for responding to Covered Communications and all agents and representatives who participate in drafting, approving, or enforcing customer contracts, or responding to Covered Communications; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Reports and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

- C. From each individual or entity to which a Respondent delivered a copy of this Order, Respondent must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

IV. Compliance Reports and Notices

IT IS FURTHER ORDERED that Respondents make timely submissions to the Commission:

- A. One year after the issuance date of this Order, each Respondent must submit a compliance report, sworn under penalty of perjury, in which:
1. Each Respondent must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Respondent; (b) identify all of that Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered and the means of advertising, marketing, and sales, any conduct toward consumers who have engaged in Covered Communications, and the involvement of any other Respondent (which Individual Respondent must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes Respondent made to comply with this Order; and (e) provide a copy of each Acknowledgment of this Order obtained pursuant to this Order, unless previously submitted to the Commission.
 2. Additionally, Individual Respondent must: (a) identify all his telephone numbers and all his physical, postal, email and Internet addresses, including all residences; (b) identify all his business activities, including any business for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest; and (c) describe in detail his involvement in each such business activity, including title, role, responsibilities, participation, authority, control, and any ownership.

Decision and Order

- B. For 3 years after the issuance date of this Order, each Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
1. Each Respondent must submit notice of any change in: (a) any designated point of contact; or (b) the structure of any Corporate Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
 2. Additionally, Individual Respondent must submit notice of any change in: (a) name, including alias or fictitious name, or residence address; or (b) title or role in any business activity, including (i) any business for which he performs services whether as an employee or otherwise and (ii) any entity in which he has any ownership interest and over which he has direct or indirect control. For each such business activity, also identify its name, physical address, and any Internet address.
- C. Each Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Respondent within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *In re A Waldron HVAC, LLC*, C-4680.

V. Recordkeeping

IT IS FURTHER ORDERED that Respondents must create certain records for 3 years after the issuance date of this Order, and retain each such records for 5 years, unless otherwise specified below. Specifically, Corporate Respondent and Individual Respondent, for any business that such Respondent, individually or collectively with any other Respondents, owns a majority of or controls directly or indirectly, must create and retain the following records:

Decision and Order

- A. Personnel records showing, for each person providing services in relation to any aspect of this Order, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- B. A copy of: each unique contract relating to a Covered Communication; each unique contract used in connection with Respondent's goods or services; all communications with consumers threatening any legal action relating to any Covered Communication; and all parties' court filings and Respondents' discovery responses in any legal action relating to any Covered Communication; and
- C. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

VI. Compliance Monitoring

IT IS FURTHER ORDERED that, for the purpose of monitoring Respondents' compliance with this Order:

- A. Within 10 days of receipt of a written request from a representative of the Commission, each Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.
- B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with each Respondent. Respondents must permit representatives of the Commission to interview anyone affiliated with any Respondent who has agreed to such an interview. The interviewee may have counsel present.
- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondents or any individual or entity affiliated with Respondents, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

VII. Order Effective Dates

IT IS FURTHER ORDERED that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate 20 years from the date of its issuance (which date may be stated at the end of this Order, near the Commission's seal), or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court

Decision and Order

alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Provision in this Order that terminates in less than 20 years;
- B. This Order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after this Order has terminated pursuant to this Provision.

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of this Order, and the dismissal or ruling is either not appealed or upheld on appeal, then this Order will terminate according to this Provision as though the complaint had never been filed, except that this Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

ATTACHMENT A to the Order – Letter Notice Template:

The notice must be in the following form, appearing on Respondents' letterhead and email with the underlined text completed as directed:

Your Right to Post Honest Reviews

Dear <Name of customer>:

Our records show that you contracted with our company for electrical, heating, or cooling services. I am writing to tell you that the Federal Trade Commission (FTC), the nation's consumer protection agency, has alleged that we used contract provisions that violate the Consumer Review Fairness Act (CRFA). The CRFA protects your ability to share your honest opinions about a business's products, services, or conduct in any forum, including social media. According to the FTC, we used provisions in our form contracts that unlawfully restrict our customers (including you) from sharing truthful information and opinions about their experiences with us.

We are contacting our customers to tell you that these contract provisions are void and we cannot enforce the provisions against you. You can publish your honest review even if you say something negative about us or our services.

Analysis to Aid Public Comment

If you have questions about the FTC's case, visit [\[add case page alias URL provided by FTC staff with embedded hyperlink\]](#).

Sincerely,

Thomas J. Waldron

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a consent order as to A Waldron HVAC, LLC and Thomas J. Waldron ("respondents").

The proposed consent order ("order") has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the order and the comments received, and will decide whether it should withdraw the order or make it final.

This matter involves the respondents' use of non-disparagement provisions in consumer form contracts in the course of selling their electrical, heating, and cooling services. The complaint alleges that the respondents violated Section 2(c) of the Consumer Review Fairness Act ("CRFA") by offering to consumers form contracts that contained non-disparagement provisions made void by Section 2(b) of the CRFA. The CRFA defines a form contract as a contract with standardized terms, used in the course of selling or leasing goods or services, and imposed on an individual without a meaningful opportunity for such individual to negotiate the standardized terms.

The order includes injunctive relief that prohibits these alleged violations and fences in similar and related conduct involving the use of contract terms that prohibit, restrict, penalize, or transfer rights in consumer reviews or evaluations of the respondents, their goods, or their services. The CRFA authorizes the Commission to seek civil penalties for knowing violations, but the complaint does not allege that the respondents' violations were knowing, and the order does not provide for monetary relief.

Part I prohibits, in the sale or leasing of any good or service, the respondents from: offering to any prospective customer a contract, or offering to any customer a renewal contract, that includes a review-limiting term; requiring that a customer accept such a term as a condition of the respondents' fulfillment of their obligations under contracts entered into before the effective date of the order; or attempting to enforce or assert the validity of such a term in customer contracts entered into before the effective date of the order. Part I would not require

Analysis to Aid Public Comment

that the respondents publish or host the content of any person, affect any other legal duty of a party to a contract, or affect any cause of action arising from the breach of such duty.

Part II requires the respondents to notify by mail or email customers with whom they entered into form contracts with a non-disparagement provision on or after March 14, 2017 that the non-disparagement provision is void and cannot be enforced, and that those customers can publish their honest reviews about the respondents, even if their comments are negative.

Part III requires the respondents to submit signed acknowledgments that relevant personnel received the order.

Part IV requires the respondents to file compliance reports with the Commission, and to notify the Commission of bankruptcy filings or changes in company structure that might affect compliance obligations.

Part V contains recordkeeping requirements for personnel records, consumer contracts, communications with consumers threatening any legal action relating to any review; and court filings and the company's discovery responses in legal actions over consumer reviews, as well as all records necessary to demonstrate compliance or non-compliance with the order.

Part VI contains other requirements related to the Commission's monitoring of the respondent's order compliance.

Part VII provides the effective dates of the order, including that, with exceptions, the order will terminate in 20 years.

The purpose of this analysis is to facilitate public comment on the order, and it is not intended to constitute an official interpretation of the complaint or order, or to modify the order's terms in any way.

Complaint

IN THE MATTER OF

**LVTR LLC
D/B/A
LAS VEGAS TRAIL RIDING,
AND
TOMI A. TRUAX**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT AND SECTION 2 OF THE CONSUMER REVIEW FAIRNESS ACT*Docket No. C-4679; File No. 182 3098
Complaint, June 19, 2019 – Decision, June 19, 2019*

This consent order addresses LVTR LLC’s use of non-disparagement provisions in consumer form contracts in the course of selling their recreational horseback riding services. The complaint alleges that the respondents violated Section 2(c) of the Consumer Review Fairness Act (“CRFA”) by offering to consumers form contracts that contained non-disparagement provisions made void by Section 2(b) of the CRFA. The consent order prohibits, in the sale or leasing of any good or service, the respondents from: offering to any prospective customer a contract, or offering to any customer a renewal contract, that includes a review-limiting term; requiring that a customer accept such a term as a condition of the respondents’ fulfillment of their obligations under contracts entered into before the effective date of the order; or attempting to enforce or assert the validity of such a term in customer contracts entered into before the effective date of the order.

*Participants**For the Commission: Carl H. Settlemyer.**For the Respondents: Brandon McCoy, solo practitioner.***COMPLAINT**

The Federal Trade Commission, having reason to believe that LVTR LLC (also d/b/a Las Vegas Trail Riding and Las Vegas Trail Ride) and Tomi A. Truax, individually and as owner and manager of LVTR LLC (collectively “Respondents”) have violated the Consumer Review Fairness Act of 2016, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent LVTR LLC (“LVTR”) is a Nevada limited liability company with its principal office or place of business in Henderson, Nevada. LVTR sells recreational horseback riding services.
2. Respondent Tomi A. Truax is owner and manager of LVTR. Individually or in concert with others, she controlled or participated in the acts and practices of LVTR, including the acts and practices alleged in this complaint. Her principal office or place of business is the same as that of LVTR.