

Commonwealth of Massachusetts
County of Suffolk
The Superior Court

CIVIL DOCKET#: SUCV2006-04978-E

RE: Mass v Myers et al

TO: Jean Healey, Esquire
Mass Atty General's Office
1 Ashburton Place
Consumer Protection & Antitrust
Boston, MA 02108



NOTICE OF DOCKET ENTRY

You are hereby notified that on **12/24/2012** the following entry was made on the above referenced docket:

FINAL JUDGMENT BY DEFAULT AS TO RICHARD T MYERS There is no just reason for delay and execution of this Final Judgment by Default constitutes an entry of judgment pursuant to Mass R Civ P 54(b) (MacLeod J) entered on docket pursuant to Mass R Civ P 58(a) and notice sent to parties pursuant to Mass R Civ P 77(d)

Dated at Boston, Massachusetts this 24th day of December, 2012.

Michael Joseph Donovan,
Clerk of the Courts

BY: Margaret M. Buckley
Assistant Clerk

Telephone: 617-788-8144

Notify

80

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

SUPERIOR COURT
Civil Action No. 06-4978

COMMONWEALTH OF MASSACHUSETTS

CONTEMPT PROCEEDING

Plaintiff,

v.

RICHARD T. MYERS,
Individually and as Owner of
R.T. MYERS & SONS, and
NORMAN FRANKLIN,
and THEODORE MYERS,

Defendants.

FINAL JUDGMENT BY DEFAULT AS TO RICHARD T. MYERS

This matter came on for hearing before the court upon the filing of the plaintiff, Commonwealth of Massachusetts, by and through Attorney General Martha Coakley, of a Motion for Final Judgment by Default as to Richard T. Myers and For Assessment of Damages ("Motion"), following the failure of Defendant Richard T. Myers ("Myers") to plead or otherwise defend against the Complaint for Contempt.

The court having considered the Motion, and the accompanying memorandum and affidavits, and the Complaint and other evidence and materials before the court,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

FINDINGS

This Court, based on allegations in the Complaint for Contempt and affidavits presented, makes the following findings:

JUDGMENT ENTERED ON DOCKET 12/24 2012
PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 52(a)
AND NOTICE SENT TO IT FILED PURSUANT TO THE PRO-
VISIONS OF MASS. R. CIV. P. 77(j) AS FOLLOWS

*Notice Sent
12/24/12
RTM
DWM
JA
TAD
EMJ*

THIS COPY OF JUDGEMENT ONLY ENTERED ON 12/24

JURISDICTIONAL FINDINGS

1. This court has jurisdiction over the subject matter of this action pursuant to G.L. c. 93A, § 4, and G.L. c. 214, § 1.
2. Personal jurisdiction over the defaulting defendant is proper pursuant to G.L. c. 223A, § 3.
3. Venue is proper in Suffolk County pursuant to G.L. c. 93A, § 4.

FINDINGS IN SUPPORT OF DEFAULT

4. On November 19, 2012, the Commonwealth initiated the above-captioned proceeding by filing a Complaint for Civil Contempt. The Court issued a summons for all parties to appear on November 28, 2012, at 2:00PM, for the purpose of considering whether the filing of an answer is necessary, and considering such other matter or performing such other act as the Court may deem appropriate. The Court further ordered that the Commonwealth make reasonable attempts to perfect in-hand service, but if unable to perfect such service, the Commonwealth may make service at Myers' last and usual address.

5. The Commonwealth served Myers at his last and usual address after making two separate attempts to perfect in-hand service. This Court finds that the Commonwealth's attempts to perfect in-hand service were reasonable. Furthermore, this Court finds that 164 Prospect St., Norwell, MA, is Myers' last and usual address for the purpose of service, given that the address is the current address on record for Myers with the Massachusetts Registry of Motor Vehicles, because Myers continues to receive mail at the address, and because Myers directed the Commonwealth to deliver documents to that address on November 26, 2012.

6. On November 28, 2012, Myers failed to appear despite having been served with the Summons and Complaint for Civil Contempt, and having received actual notice of the

proceedings from attorneys for the Commonwealth. At the hearing, the Court ordered that Myers file an answer to the Complaint for Civil Contempt by December 10, 2012, and further granted the Commonwealth's request for leave to conduct discovery.

7. Myers failed to answer by December 10, 2012. On December 14, 2012, the Clerk entered a default against Myers for failure to plead or otherwise defend against the Complaint for Civil Contempt.

8. Accordingly, entry of final judgment by default against Myers is an appropriate sanction, and is hereby ordered.

FINDINGS ON THE MERITS

9. On February 15, 2011, this Court entered judgment against Myers, ordering him to pay restitution in an amount of \$291,114.34; civil penalties in an amount of \$300,000; and attorneys' fees and costs in an amount of \$116,550. The Court further permanently enjoined Myers from:

- a. Operating as a contractor by owning or operating a contracting business and, through himself or another, undertaking offering to undertake, purporting to have the capacity to undertake, or submitting a bid for Home Improvement Work;
- b. Engaging in or performing Home Improvement Work;
- c. Soliciting or entering into contracts with any consumer for Home Improvement Work,
- d. Accepting money, including consumer deposits, from any consumer related to Home Improvement Work; or
- e. Otherwise acting in any manner in violation of the Home Improvement Contractors Act, G.L. c. 142A or the Massachusetts Consumer Protection Act, G.L. c. 93A, including, without limitation, accepting money from consumers and failing to complete the promised services in satisfactory manner or failing to deliver the correct promised goods.

The term "Home Improvement Work" is defined by the February 15, 2011 Judgment to mean:

". . . the construction, reconstruction, alternation [sic], renovation, repair, modernization, conversion, improvement, removal or demolition, cleaning, construction of an addition to any residence, building, or any structure, accessory structure or fixture in residences or on residential properties, including, without limitation, fixtures defined in the Massachusetts Building Code 780 C.M.R. 5202, such as air-conditioning systems, basements, chimneys, decks, garages, pools, heating systems, roofs, skylights, stoves, or ventilation systems;"

1. The Cefalos

10. On December 20, 2011, Defendant contacted Gloucester residents Phyllis Cefalo and her husband, Frank Cefalo, and offered to inspect their home for possible mold contamination. Defendant claimed to have significant experience investigating and remediating mold in homes, and claimed to have many years of experience as a general contractor. The Cefalos hired Defendant to perform the inspection and, on December 21, 2011, Defendant met the Cefalos at their home.

11. During the inspection, Defendant identified a carpet in the Cefalos' basement that he claimed was shedding carpet fibers and contaminating the air within the home. Defendant recommended replacing the carpet with hardwood flooring and offered to do the job himself for \$850. The Cefalos agreed to hire Defendant and gave him a check for the requested amount.

12. On December 26, 2011, Defendant returned to the Cefalos' home and requested payment of an additional \$2,150. Contrary to Mrs. Cefalo's understanding, Defendant represented that replacing the carpet with hardwood flooring would cost \$2,150, and that the \$850 previously paid by the Cefalos covered only the cost of the inspection. That day, Defendant provided the Cefalos with a proposal describing the work he proposed to do and the total cost of \$2,150 (the "Proposal"). Under the name of Atlantic Restoration Company, the

Defendant's company, the proposal contains the words "[a]ll phases of renovations." On December 26, 2011, Mrs. Cefalo paid Defendant the requested \$2,150.

13. From December 26, 2011 to January 27, 2012, Defendant completed little work on the Cefalo's home. Moreover, Defendant improperly installed the hardwood flooring. Nevertheless, on January 27, 2012, Defendant requested yet another payment from the Cefalos.

14. Defendant did not provide the Cefalos with a reasonable explanation for why he needed an additional payment, nor did he explain his slow progress. As a result, Mrs. Cefalo asked Defendant to cease working on the hardwood flooring installation.

15. Later that evening, Mr. Cefalo called Defendant and asked him to deliver to the Cefalos any unused materials he had purchased for their home. Defendant refused to do so. The Cefalos subsequently hired a new contractor who repaired and completed the flooring installation at an additional cost of approximately \$1,000.

16. Defendant failed to refund any portion of the \$3,000 paid by the Cefalos, despite having failed to provide the agreed upon services.

17. With respect to the Cefalos, Defendant committed the following willful and knowing violations of the Permanent Injunction:

- a) Operating as a contractor or operating a contracting business called Atlantic Restoration Company;
- b) Purporting to have the capacity to undertake, offering to undertake and submitting a bid for Home Improvement Work to the Cefalos;
- c) Engaging in Home Improvement Work;
- d) Soliciting and entering into contracts with the Cefalos for Home Improvement Work; and

- e) Accepting money from the Cefalos related to Home Improvement Work.

2. The Bellwins

18. In December 2012, after Defendant received actual notice of the above-captioned Civil Contempt proceeding, Defendant, doing business as Atlantic Restoration Systems, responded to a request for a construction quote by Michael Bellwin, a consumer, and arranged a time to meet at Mr. Bellwin's home in Norfolk, Massachusetts. On December 7, 2012, Defendant met Mr. Bellwin at his home and provided a quote for a project that included the filling-in of an in-ground swimming pool, the demolition of a pool house, light landscaping, and debris removal. Defendant represented that he could complete the work in one day, and for \$2,500, approximately half the cost of other estimates provided to Mr. Bellwin. Along with the estimate, Defendant gave Mr. Bellwin his business card. The business card states:

ATLANTIC RESTORATION SERVICES
OVER TWENTY YEARS OF SERVICE

COMMERCIAL AND RESIDENTIAL
ALL PHASES OF CONSTRUCTION

......*

FULLY LIC AND ISURED (SIC) MASS DOT #908609

19. With respect to the Bellwins, Defendant committed the following willful and knowing violations of the Permanent Injunction:

- a) Operating as a contractor or operating a contracting business called Atlantic Restoration Systems; and

- b) Purporting to have the capacity to undertake, offering to undertake and submitting a bid for Home Improvement Work to the Bellwins.

20. This Court finds Myers in contempt of Court for the above violations of the Permanent Injunction.

ORDERS FOR JUDGMENT

Wherefore, this Court grants the Commonwealth's demand for relief and it is ordered and adjudged that:

1. Judgment is entered in favor of the Commonwealth and against Defendant Richard T. Myers;
2. Pursuant to M.G.L. 93A, § 4, the February 15, 2011 Findings of Fact, Rulings of Law, and Orders for Judgment, and this Court's inherent power to compel obedience to its decrees, the Commonwealth is awarded and Defendant Richard T. Myers is ordered to pay restitution in the amount of \$3,000;
3. Pursuant to M.G.L. 93A, § 4, the February 15, 2011 Findings of Fact, Rulings of Law, and Orders for Judgment, and this Court's inherent power to compel obedience to its decrees, the Commonwealth is awarded and Defendant Richard T. Myers is ordered to pay civil penalties in the amount of \$20,000 for violations of the permanent injunction in the February 15, 2011 Findings of Fact, Rulings of Law, and Orders for Judgment;
4. Pursuant to M.G.L. 93A, § 4, the February 15, 2011 Findings of Fact, Rulings of Law, and Orders for Judgment, and this Court's inherent power to compel obedience to its decrees, the Commonwealth is awarded and Defendant Richard T. Myers is ordered to pay costs of bringing this action, including attorneys' fees, in the sum of \$21,250.

5. Pursuant to M.G.L. 93A, § 4, the February 15, 2011 Findings of Fact, Rulings of Law, and Orders for Judgment, and this Court's inherent power to compel obedience to its decrees, Defendant Richard T. Myers is ordered to pay the sums set forth above within thirty (30) days of entry of this Judgment. If he fails to pay in compliance with this Judgment, and he fails to make an appropriate showing as to why he is unable to comply, he shall be taken into custody and confined until such time as he complies.

6. There is no just reason for delay, and the execution of this Final Judgment by Default constitutes an entry of judgment, pursuant to Mass. R. Civ. P. 54(b).

SO ORDERED, ADJUDGED AND DECREED.

At Boston, Massachusetts, this 18th day of December.



JUSTICE OF THE SUPERIOR COURT

Notify

COMMONWEALTH OF MASSACHUSETTS

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SUFFOLK COUNTY

SUPERIOR COURT

Civil Action No. 2006, 4978-E

COMMONWEALTH OF MASSACHUSETTS

CONTEMPT PROCEEDING

Plaintiff,

v.

RICHARD MYERS, d/b/a ATLANTIC RESTORATION COMPANY

Defendant.

2012 DEC 14 PM 2:19

APPLICATION FOR DEFAULT JUDGMENT AGAINST DEFENDANT RICHARD T. MYERS

Pursuant to Mass. R. Civ. P. Rule 55, the Commonwealth of Massachusetts (the "Commonwealth") hereby applies for judgment by default against Defendant Richard T. Myers ("Myers"), whereby Myers is found in contempt of court for the willful violation of the permanent injunction contained in the February 15, 2011 FINDINGS OF FACT, RULINGS OF LAW AND ORDERS FOR JUDGMENT, in Commonwealth of Massachusetts v. Richard T. Myers, et al., Civil Action No. 06-4978 ("Permanent Injunction"). A Proposed Judgment by Default is attached hereto as Exhibit A.

In support of this Application, the Commonwealth relies upon the supporting memorandum of law, December 12, 2012 Affidavit of Justin J. Lowe, and Request for Entry of Default, concurrently filed herewith, and all other pleadings and records on file in the above-captioned action. Specifically, the Commonwealth incorporates by reference the following pleadings and orders:

12/15/12 ✓
Allan
Maled, J
NOTICE
SENT
12/24/12

1. The February 15, 2011 FINDINGS OF FACT, RULINGS OF LAW AND ORDERS FOR JUDGMENT, in Commonwealth of Massachusetts v. Richard T. Myers, et al., Civil Action No. 06-4978;
2. The Affidavit of Phyllis Cefalo and all exhibits thereto, filed on November 19, 2012;
3. The November 19, 2012 Motion for Order Appointing Special Process Server and Order thereon;
4. The November 19, 2012 Order Re Civil Contempt, directing the parties to appear on November 28, 2012 for the purpose of considering whether the filing of an answer is necessary, and considering such other matter or performing such other acts as the Court may deem appropriate;
5. The November 28, 2012 Affidavits of Justin J. Lowe and Kevin F. McCarthy; and
6. The Court's November 28, 2012 Order whereby Myers was directed to answer the Commonwealth's Complaint for Contempt no later than December 10, 2012, and whereby a further status conference was scheduled to take place on December 14, 2012 at 2:00 PM.

The above-referenced pleadings, orders, affidavits and accompanying exhibits set forth the factual justification for the relief requested herein. Specifically, the Affidavit of Phyllis Cefalo describes an instance where Defendant willfully violates the Permanent Injunction less than a year after the injunction was entered. The November 28, 2012 Affidavits of Justin J. Lowe and Kevin F. McCarthy describe the manner in which the Commonwealth served Myers with the summons, complaint, and other documents, and telephone conversations between Myers and Messrs. Lowe and McCarthy. The December 12, 2012 Affidavit of Justin J. Lowe describes

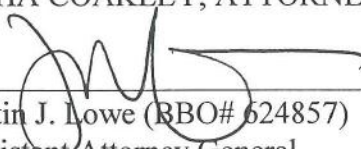
additional complaints against Myers received by the Commonwealth since the filing of the Complaint for Contempt, the Commonwealth's subsequent efforts to serve Myers with discovery in this action, and the amount of attorneys' fees and costs incurred by the Commonwealth in the above-captioned contempt proceeding.

WHEREFORE, the Commonwealth respectfully requests that the Court enter the Proposed Judgment by Default concurrently filed herewith.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS
MARTHA COAKLEY, ATTORNEY GENERAL

By: _____


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Date: December 14, 2012