

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

COMMONWEALTH OF VIRGINIA,)
EX REL. MARK R. HERRING,)
ATTORNEY GENERAL,)

Plaintiff,)

v.)

CIVIL ACTION NO. CL18-3920

HEARTS 2 HEROES INC.,)
a partnership, formerly a West Virginia)
corporation,)

CHRISTOPHER ENGLE,)
an individual and co-partner doing business)
under the firm name Hearts 2 Heroes Inc.,)

and)

KAYLA ENGLE,)
an individual and co-partner doing business)
under the firm name Hearts 2 Heroes Inc.,)

Defendants.)

AMENDED COMPLAINT

The Plaintiff, Commonwealth of Virginia (the “Plaintiff” or “Commonwealth”), by, through, and at the relation of its Attorney General, Mark R. Herring, petitions this Court to declare that the activities in which the Defendants, Hearts 2 Heroes Inc. d/b/a Active Duty Support Services Inc., Christopher Engle, and Kayla Engle a/k/a Kayla N. D’Angelo (together, the “Defendants” or “H2H”), have engaged constitute violations of the Virginia Consumer Protection Act (“VCPA”), Virginia Code §§ 59.1-196 through 59.1-207, and the Virginia Solicitation of Contributions (“VSOC”) law, Virginia Code §§ 57-48 through 57-69; to enjoin

these violations; to restore to consumers the sums acquired from them in violation of the VCPA, or, in the alternative, impose a constructive trust on all funds received for charitable purposes; and to award civil penalties, expenses, and attorneys' fees to the Commonwealth. The Commonwealth prays that this Court grant the relief requested in this Complaint and states the following in support thereof:

JURISDICTION AND VENUE

1. The Commonwealth brings this action pursuant to the authority set forth in § 59.1-203 of the VCPA, which provides, among other things, that the Attorney General may bring an action to enjoin any violation of the VCPA, and § 57-59(D) of the VSOC law, which provides, among other things, that the Attorney General may bring an action to enjoin any violation of the VSOC law.

2. The Circuit Court of the County of Henrico has authority to entertain this action and to grant the relief requested herein pursuant to Virginia Code §§ 8.01-620, 17.1-513, 57-59, 59.1-203, 59.1-205, and 59.1-206.

3. Venue is permissible in this Court pursuant to Virginia Code § 8.01-262(2), (3), and (4) because the corporate Defendant has a registered office and has appointed an agent to receive process in Henrico County, because there exists a practical nexus to Henrico County including the location of fact witnesses and other evidence to the action, because the Defendants regularly conduct substantial business activity in Henrico County, and because portions of the causes of action arose in Henrico County. Venue is preferred in this Court pursuant to Virginia Code § 8.01-261(15)(c) because some or all of the acts to be enjoined are, or were, being done in Henrico County.

4. The Defendants transacted business in Virginia through soliciting or obtaining

contributions from Virginia residents and advertising and selling care packages to Virginia residents, including in Henrico County.

5. At all relevant times, the Defendants have purposefully availed themselves of this forum.

6. In accordance with Virginia Code § 59.1-203(B), prior to commencement of this action, the Plaintiff gave the Defendants written notice that these proceedings were contemplated and a reasonable opportunity to appear before the Office of the Attorney General to demonstrate that no violations of the VCPA had occurred, or, in the alternative, to execute an appropriate Assurance of Voluntary Compliance that is acceptable to the Commonwealth. The Defendants thereafter failed to establish that no violations of the VCPA had occurred, but agreed to execute an acceptable Consent Judgment in lieu of an Assurance of Voluntary Compliance.

PARTIES

7. The Plaintiff is the Commonwealth of Virginia, by, through, and at the relation of Mark R. Herring, Attorney General of Virginia.

8. The corporate Defendant, Hearts 2 Heroes Inc., was a corporation organized under the laws of the State of West Virginia, with its principal place of business in Bunker Hill, West Virginia. The corporate Defendant has a registered office located at 4701 Cox Road, Suite 285, Glen Allen, Virginia 23060 and obtained a Certificate of Authority to Transact Business in Virginia from the Virginia State Corporation Commission. The corporate Defendant filed for a voluntarily dissolution with the West Virginia Secretary of State in 2016, and has since been operating as a partnership with the two individual Defendants as the only partners. The corporate Defendant is registered as a charitable organization with the Virginia Department of Agriculture and Consumer Services' Office of Charitable and Regulatory Programs. On

information and belief the corporate Defendant is no longer in operation.

9. Christopher Engle and Kayla Engle are the founders, partners, and managers of Hearts 2 Heroes Inc.

FACTS

10. Hearts 2 Heroes Inc. is a for-profit organization incorporated in West Virginia that solicited door to door in Virginia, West Virginia, Maryland, and Pennsylvania, and that purportedly sold care packages including items such as hygiene products and snacks, which it claimed to ship to soldiers overseas.

11. As of June 26, 2018, H2H's website indicated Hearts 2 Heroes Inc. had sent 30,078 care packages.

12. H2H's website claimed, "Our company relies solely on your help to send CARE PACKAGES overseas to our soldiers who are currently deployed and who are not receiving [sic] any correspondences from family, friends, or anyone state side."

13. While H2H's website noted that Hearts 2 Heroes Inc. is not a "non-profit," it also stated the company is "devoted to making sure we lift the spirits and the morale of our deployed men and women overseas!"

14. H2H also solicited individuals to "donate" in-kind contributions on the "Contact Us" page of the Hearts 2 Heroes Inc. website.

15. Consumer donors were approached at their doors and shown different contribution levels and donation options including to which military branch donations would be directed, but once they made a payment consumer donors generally were not provided any documentation or substantiation that funds were used as promised.

16. Consumer donors were left not knowing how or whether their payments were

used as promised, and in some cases only find out later through online searches that the company was not what it represented itself to be, or when examining a receipt noting that donations were not tax deductible as they were led to believe.

17. The Defendants have engaged in a pattern and practice of making a variety of misrepresentations to consumers and donors regarding the care packages they purported to provide.

18. H2H sales staff regularly misled consumers regarding the nature of the business, including by leading those they were soliciting to believe that Hearts 2 Heroes Inc. was a charity, when it was not, or that donations made were tax deductible, when they were not.

19. On information and belief, care packages, where delivered at all, were provided to military bases in the United States, not overseas as represented.

20. Moreover, on information and belief, H2H staff have engaged in other deceptive conduct such as representing to consumers that staff were veterans or volunteers when in fact those staff were not veterans or volunteers.

21. On information and belief, H2H staff would also regularly “skim” cash donations for themselves.

22. In one instance, a consumer was told the entire donation would be used for a care package, but was not shown or provided any documents regarding the transaction.

23. The consumer paid \$48 to H2H.

24. The consumer was so impressed by the H2H sales person’s presentation that a neighbor came over and also gave money to H2H.

25. In another instance, a consumer was told that donations would be tax deductible and that the H2H staff member was a volunteer, when neither representation was true.

26. The consumer paid \$48 to H2H.

27. The Commonwealth has reason to believe that such occurrences were typical of H2H transactions, and that the misrepresentations noted are only the tip of the proverbial iceberg regarding the company's deception.

28. On information and belief, many consumers would not have donated funds had they known the true nature of the business, and the donations they gave were made in lieu of providing to other groups.

29. From at least as early as June 2015 through at least December 2016, H2H made thousands of sales of "care packages" in the Commonwealth totaling more than \$100,000 in funds provided to the company in amounts ranging from \$5 to \$320.

30. Until at least June 26, 2018, the company continued to solicit on Facebook and a website located at www.activedutysupportservices.com.

CAUSES OF ACTION

Count I: Virginia Consumer Protection Act

31. The Plaintiff realleges and incorporates herein by reference the matters set forth in Paragraphs 1 through 30 above.

32. The Defendants are now, and were at all relevant times mentioned herein, "supplier[s]" of "goods" or "services" in connection with "consumer transaction[s]" as those terms are defined in § 59.1-198 of the VCPA.

33. By advertising, selling, and offering for sale care packages to consumers in their homes, the Defendants have engaged and do engage in "consumer transaction[s]," as defined in § 59.1-198 of the VCPA.

34. By misrepresenting to individuals that H2H is a charity or that donations made are

tax deductible, misrepresenting that care packages are sent overseas, and misrepresenting that sales staff were veterans or volunteers, the Defendants have engaged in the following prohibited practices under the VCPA:

- a. Misrepresenting the source, sponsorship, approval, or certification of goods or services, in violation of § 59.1-200(A)(2);
- b. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits, in violation of § 59.1-200(A)(5);
- c. Advertising goods or services with intent not to sell them as advertised, or with the intent not to sell at the price or upon the terms advertised, in violation of § 59.1-200(A)(8); and
- d. Using any deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction, in violation of § 59.1-200(A)(14).

35. Individual consumers have suffered losses as a result of the Defendants' violations of § 59.1-200(A)(2), (5), (8), and (14) of the VCPA.

36. The Defendants have willfully engaged in the acts and practices described in this Complaint in violation of the VCPA.

37. Christopher Engle and Kayla Engle individually directed, controlled, approved, or participated in the acts and practices of Hearts 2 Heroes Inc., including those acts and practices that are the subject of this Complaint.

Count II: Virginia Solicitation of Contributions Law

38. The Plaintiff realleges and incorporates herein by reference the matters set forth in Paragraphs 1 through 37 above.

39. The corporate Defendant is or was during all relevant times a “charitable organization” which held itself out to be organized or operated for “charitable purpose[s],” and “solicit[ed]” or obtained “contribution[s]” solicited from the public as those terms are defined in the VSOC law.

40. By misrepresenting to individuals that H2H is a charity or that donations made are tax deductible, misrepresenting that care packages are sent overseas, misrepresenting that sales staff were veterans or volunteers, and using or permitting the use of funds raised by a charitable solicitation for purposes other than the solicited purpose, the Defendants have engaged in the following prohibited practices under the VSOC law:

- a. Employing in any solicitation or collection of contributions for a charitable purpose any device, scheme or artifice to defraud or obtain money or property by any misrepresentation or misleading statement, in violation of § 57-57(L); and
- b. Using or permitting the use of the funds raised by a charitable solicitation for any purpose other than the solicited purpose or, with respect to funds raised by general appeals, the general purposes of the charitable or civic organization on whose behalf the solicitation was made, in violation of § 57-57(N).

41. Christopher Engle and Kayla Engle individually directed, controlled, approved, or participated in the acts and practices of Hearts 2 Heroes Inc., including those acts and practices that are the subject of this Complaint.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, Commonwealth of Virginia, prays that this Court:

- A. Permanently enjoin H2H from violating § 59.1-200(A)(2), (5), (8), and (14) of the

VCPA and § 57-57(L) and (N) of the VSOC law, pursuant to Virginia Code §§ 59.1-203 and 57-59(D);

B. Grant judgment against H2H and award to the Commonwealth all sums necessary to restore to any consumers the money or property acquired from them by H2H in connection with its violations of § 59.1-200(A)(2), (5), (8), and (14) of the VCPA, pursuant to Virginia Code § 59.1-205;

C. Grant judgment against H2H and award to the Commonwealth civil penalties of up to \$2,500 per willful violation of § 59.1-200(A)(2), (5), (8), and (14) of the VCPA, pursuant to Virginia Code § 59.1-206(A), and civil penalties of not more than \$5,000 per violation of § 57-57(L) and (N) of the VSOC law, pursuant to Virginia Code § 57-59(E);

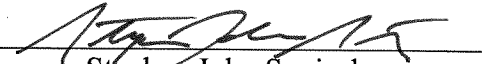
D. Grant judgment against H2H and award to the Commonwealth its costs, reasonable expenses incurred in investigating and preparing the case up to \$1,000 per violation of § 59.1-200(A)(2), (5), (8), and (14) of the VCPA and its costs, reasonable expenses incurred in investigating and preparing the case not to exceed \$250 per violation of § 57-57(L) and (N) of the VSOC law, and its attorneys' fees, pursuant to Virginia Code §§ 59.1-206(C) and 57-59(E);

E. Impose a constructive trust on all funds received by H2H from the solicitations described in this Complaint for the benefit of charitable organizations who support those purposes for which the funds were solicited; and

F. Order such other and further relief as may be deemed proper and just.

COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL

By: _____


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CERTIFICATE OF SERVICE

I, Stephen John Sovinsky, certify that on August 12, 2019 a true copy of the foregoing Amended Complaint was mailed via first class mail to:

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Stephen John Sovinsky