

AMERICAN ARBITRATION ASSOCIATION

JAN 29 2007

JASON PARHAM, individually)
and on behalf of a class of persons)
similarly situated,)
)
Claimants,)
)
)
vs.)
)
AMERICAN BANKERS INSURANCE)
COMPANY OF FLORIDA,)
)
Respondent.)

AAA Case No. 30 195 00055 07

AMENDED CLASS ACTION

ARBITRATION COMPLAINT

Claimant Jason Parham (“Claimant”), individually and on behalf of all others similarly situated, for his class action arbitration complaint against American Bankers Insurance Company of Florida (“Respondent”), alleges upon information and belief, except as to the allegations which pertain to Claimant and his counsel which claims are based on personal knowledge, as follows:

INTRODUCTION

1. Claimant brings this class action arbitration on behalf of himself and all other individuals who purchased a Home Buyers Protection Plan issued by Respondent.
2. Along with the purchase of a mobile home Claimant and others similarly situated purchased an extended warranty described as the Home Buyers Protection Plan. The Plan’s length of coverage is based in terms of months. An individual can purchase a Plan that provides coverage for 12 months, 24 months, 36 months, 48 months, or 60 months. The premium paid by Claimant and others similarly situated is based on the length of coverage.

3. The Plan Contract or Policy issued by Respondent to Claimant and others similarly situated provides that “YOUR manufactured home has a one-year warranty provided by its manufacturer which begins on the date YOU accept delivery of the manufactured home. YOUR Contract provides coverage upon expiration of the manufacturer’s warranty for the term shown on the Declarations.”

4. The Declarations and Application show that the policy period begins on the date of purchase or delivery and not on the expiration of the manufacturer’s one year warranty. As a result, Claimant and others similarly situated have been charged premiums for a service or product they did not receive. For example, Claimant paid a premium for a sixty (60) month plan but only received a forty-eight (48) month plan. Through this scheme Respondent has received unearned premiums from Claimant and others similarly situated.

5. This action alleges that the Respondent has violated state statutory law and common law in issuing Home Buyers Protection Plans in Alabama and other states, breaching their contracts with the policyholders and converting to their own use monies and funds belonging to the Claimant and other class members. Claimant seeks, *inter alia* an order permanently enjoining Respondent from selling these plans in states where they are not licensed to sell such products and an order refunding unearned premiums on the policies.

6. Claimant seeks certification of a class comprised of United States residents who purchased a Home Buyers Protection Plan and were charged premiums and/or for goods and/or services they did not receive as a result of the improper conduct of the Respondent.

JURISDICTION AND VENUE

7. The American Arbitration Association (“AAA”) has jurisdiction over this class action arbitration and Respondent pursuant to the provision in the Arbitration Clause

Endorsement drafted by Respondent choosing the AAA as an acceptable forum for arbitration of claims against Respondent. [See Arbitration Clause Endorsement attached to this Complaint as Claimant's Exhibit 1]

8. The AAA also has jurisdiction over this class action arbitration and Respondent pursuant to the AAA's Commercial Arbitration Rules and the Supplemental Rules for Class Arbitration.

9. The AAA also has jurisdiction over this class action arbitration and Respondent pursuant to *Green Tree Fin. Corp. v. Bazzle*, 539 U.S. 444 (2003), insofar as no agreement among the parties precludes class action arbitration.

PARTIES

Claimant

10. Claimant Jason Parham is an adult resident citizen of Alabama.

Respondent

11. Respondent American Bankers Insurance Company of Florida is believed by the Claimant to be a foreign corporation or business whose principle place of business is located at 11222 Quail Road Drive, Miami, FL 33157 and whose agent for service in the State of Alabama is the Incorporating Service, Inc., 150 S. Perry Street, Montgomery, AL 36104. This Respondent is issuing these plans and/or extended warranties in the State of Alabama and throughout the country. At all pertinent times this Respondent was doing business in the State of Alabama.

JASON PARHAM'S TRANSACTION

12. On or about August 4, 2003, Claimant purchased a mobile home. As part of the purchase of the mobile home, Claimant purchased this plan and/or an extended warranty that was issued by Respondent American Bankers.

13. Claimant paid a \$480.00 premium for a sixty (60) month Plan. The sixty (60) month term paid for was to begin upon the expiration of the manufacturer's warranty. The Plan and/or service contract issued by the Respondent to the Claimant was for the term of sixty months and, as set forth on the declarations page, was from August 4, 2003 to August 4, 2008. However, according to the terms of the policy, it provided no coverage for August 4, 2003 though August 4, 2004. Thus, Claimant paid a premium based on the sixty (60) month Plan but should have only been charged a premium based on the forty eight (48) month plan.

14. At the time of the issuing of the extended warranty policy to the Claimant, Respondent American Bankers was not licensed or registered in the State of Alabama as a service contract provider.

15. By charging the Claimant and others similarly situated for coverage not received, Respondent has violated the statutory and common laws in the State of Alabama and in other places. Further, by selling this product without being registered by the Alabama Department of Insurance, Respondent violated the statutory laws of the State of Alabama and may have in other places. This action is brought pursuant to the common law and statutory law of the State of Alabama.

CLASS ACTION ALLEGATIONS

16. Claimant brings this action on behalf of himself and all members of a class composed of all those persons who purchased Home Buyers Protection Plans and who were charged for goods or services that they did not receive as a result of the purchase of the Home Buyers Protection Plan.

17. Claimant avers that the class is so numerous that joinder of all persons is impractical and that the total membership of the class is at least one thousand persons.

18. Claimant believes that the names and addresses of the class members are readily attainable from the Respondent.

19. Claimant avers that there is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented.

20. Claimant further avers that the questions of law and fact common to the class predominate over questions which may affect individual class members. The questions of law and fact common to the members of the class which predominate over questions which may affect individual class members include the following:

(a) Whether, in selling the Home Buyers Protection Plan within the State of Alabama without being registered with the Alabama Department of Insurance, the Respondent American Bankers violated the requirements of Ala. Code §8-32-3(c) (1975) *et seq.*

(b) Whether the contract issued by the Respondent American Bankers was invalid because it failed to meet the requirements of Ala. Code §8-32-4 (1975) *et seq.*

(c) Whether Respondent improperly suppressed from the Claimant and others that Respondent American Bankers was not even licensed to sell this Plan.

(d) Whether Respondent had a licensed and viable agent present to sell the Plan to the Claimant and others.

(e) Whether the Claimant and other class members paid for a benefit that they did not receive when they purchased and paid premiums on a service contract that provided coverage for twelve months less than the period shown on the declarations page.

(f) Whether the members of the class have been damaged and, if so, the extent of such damages and/or the nature of the equitable and injunctive relief or statutory damages to which each class member is entitled.

21. Claimant asserts claims that are typical of the claims of the entire class.

22. Claimant will fairly and adequately represent and protect the interest of the class in that she has no interest antagonistic to those of other members of the class.

23. Claimant has retained counsel who are competent and experienced in the prosecution of class action litigation.

24. Claimant and members of the class have all suffered irreparable harm and damages as a result of Respondent unlawful and wrongful conduct.

25. Because of the size of the individual class members' claims, few, if any, class members could afford to seek legal redress for the wrongs complained of herein.

26. Absent a class action, it is not likely that the Respondent will ever be required to disgorge the profits that they have made as a result of activities which violate the various states' statutory and common law. Further, the members of the class will not obtain the full relief to which they are entitled.

27. Absent a class action, the class members will continue to suffer losses without remedy and the Respondent will be permitted to retain the proceeds of their ill gotten gains.

COUNT I
VIOLATION OF STATUTORY LAW

28. The Claimant re-alleges and adopts by reference the allegations of paragraphs 1-27 of this complaint as if set out here in full.

29. The Respondent American was doing business in the State of Alabama and thus is subject to Alabama law at the time of the incidents made the subject of this action.

30. The Respondent violated Ala. Code §8-32-3(c) through their actions as described above.

31. As a proximate result of the Respondent's violations of statutory law, the Claimant and all members of the class hereinafter defined have been damaged. They have been sold products without being given the proper disclosures in writing. They have paid for benefits that were not received. They have lost the use and value of their money taken by the Respondent.

COUNT II
SUPPRESSION

32. The Claimant re-alleges and adopts by reference the allegations of paragraphs 1-31 of this complaint as if set out here in full.

33. The Respondent suppressed from the Claimant and all of the class members that they were not authorized to sell or collect premiums for the service contracts issued in the states where they were not registered to do business.

34. As a result of the Respondent' suppression of material facts, Claimant and class members have been damaged.

COUNT III
BREACH OF CONTRACT

35. The Claimant re-alleges and adopts by reference the allegations of paragraphs 1-34 of this complaint as if set out here in full.

36. The Claimant entered into a contract with the Respondent to provide coverage for a specified period of time, in the Claimant's case, sixty months.

37. The Respondent did not provide coverage for sixty months but, instead, provided coverage for only forty-eight months according to the terms of the service agreement.

38. As a result of the Respondent's breach of contract, the Claimant and class members have been damaged.

COUNT IV
PERMANENT INJUNCTION

39. The Claimant re-alleges and adopts by reference the allegations of paragraphs 1-38 of this complaint as if set out here in full.

40. Based on the foregoing allegations, the Claimant avers that the Respondent has unlawfully and illegally charged him and others similarly situated money for a service contract.

41. Claimant prays for a permanent injunction directing American Bankers to stop selling service contracts in the State of Alabama and other states where it is illegal for them to sell the contracts without being registered.

42. Claimant further prays for a permanent injunction directing American Bankers to honor the length of the contract term with the Claimant and all others similarly situated.

COUNT V
COMMON LAW UNJUST ENRICHMENT

43. The Claimant re-alleges and adopts by reference the allegations of paragraphs 1-42 of this complaint as if set out here in full.

44. The acts of Respondent resulted in the Claimant and Class members paying more for the Home Buyers Protection Plan than it was worth, resulting in profit earnings in excess of what should have been earned for the Plan sold. This resulted in Respondent being unjustly enriched by receiving premiums in excess of the amount actually and fairly earned for the particular Plan sold.

45. As a result, Respondent has retained money which, in justice and equity, belongs to Claimant and the members of the Class. Respondent has been unjustly enriched and must return them to Claimant and the Class.

46. Alternatively, Respondent must disgorge all amounts it collected from Claimant and the Class in the form of excess premiums paid.

COUNT VI

VIOLATION OF MAGNUSON-MOSS WARRANTY ACT

47. The Claimant re-alleges and adopts by reference the allegations of paragraphs 1-46 of this complaint as if set out here in full.

48. This acts of the Respondent, as described above, violate the Magnuson-Moss Warranty Act, 15 U.S.C. §§2301-2312.

49. The Magnuson-Moss Warranty Act allows remedies by consumers pursuant to 15 U.S.C. §2310(d)(1) *et seq.*

50. As a result of the Respondent's breach of the Magnuson-Moss Warranty Act, the Claimant and class members have been damaged.

COUNT VII

**VIOLATION OF UNFAIR AND DECEPTIVE
TRADE PRACTICES ACT**

51. The Claimant re-alleges and adopts by reference the allegations of paragraphs 1-50 of this complaint as if set out here in full.

52. This acts of the Respondent, as described above, violate Florida's Unfair and Deceptive Trade Practices Act, Alabama's Unfair and Deceptive Trade Practices Act, and the Uniform Unfair and Deceptive Trade Practices Act.

53. As a result of the Respondent's violation of these acts, the Claimant and class members have been damaged.

COUNT VIII

VIOLATION OF FEDERAL TRADE COMMISSION RULES

54. The Claimant re-alleges and adopts by reference the allegations of paragraphs 1-53 of this complaint as if set out here in full.

55. 15 U.S.C. §45 forbids unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce.

56. The Respondent's actions, as described above, violate this statute.

57. As a result of the Respondent's violation of this act, the Claimant and class members have been damaged.

PRAYER FOR RELIEF

WHEREFORE, Claimant prays for an award against Respondent as follows:

a. Certifying this action to proceed as a class action arbitration, denominating Claimant as the representative for the Class and his counsel as counsel for the class;

b. Awarding Claimant and the Class compensatory damages and all statutory and exemplary damages permitted by law;

c. Awarding Claimant and the Class punitive damages as a result of Respondents' willful and intentional unlawful and inequitable conduct;

d. Permanently enjoining Respondent from continuing to engage in the unlawful and inequitable conduct alleged herein;

e. Voiding all existing Home Buyer Protection Plans between Respondent and Claimant and the Class, or the portions of those plans that are unlawful or inequitable as alleged herein;

f. Granting Claimant and the Class all equitable remedies permitted by law;

g. Ordering and instructing Respondent to provide restitution and/or to disgorge into a common fund or constructive trust all monies paid by Claimant and the Class to full extent to which Respondent is unjustly enriched by their unlawful and inequitable conduct alleged herein;

h. Granting Claimant and the Class the costs of prosecuting this action, together with interest and reasonable attorneys' and experts' fees; and

i. Granting such other relief as the Arbitrator(s) may deem just and proper under the circumstances and applicable laws.

j. An order certifying that the action may be maintained as a class action;

k. An order enjoining the Respondent from continuing to sell these plans and/or service contracts in any state in which they are not registered to sell said product.



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