

FILED
IN COUNTY CLERK'S OFFICE

A.M. SEP 02 2010 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

GREAT LAKES WINDOW, INC., an
Ohio corporation,

Defendant.

NO. 10 2 12769 6

CONSENT DECREE

Clerk's Action Required

1. JUDGMENT SUMMARY

1.1. Judgment Creditor	State of Washington
1.2. Judgment Debtors	Great Lakes Window, Inc., an Ohio corporation
1.3. Costs & Attorneys Fees:	\$10,000.00
1.4. Principal Judgment Amount:	
a. Civil Penalties	\$25,000.00 (\$25,000.00 conditionally suspended)
b. Reimbursement	\$100.00 per claim max. (\$50,000.00 aggregate)
1.5. Total Judgment	\$85,000.00 (\$25,000 conditionally suspended)
1.6. Post Judgment Interest Rate	12% per annum (as provided in Section 6.1)
1.7. Attorneys for Judgment Creditor:	Jack G. Zurlini, Jr. Assistant Attorney General

1 **1.8. Attorneys for Judgment Debtor:**

Paul R. Gary
The Gary Law Group

2
3 **1.9.** Per agreement with Defendant, Plaintiff State of Washington, commenced this
4 action and filed its Complaint on September 2, 2010, and simultaneously filed this Consent
5 Decree, pursuant to the Consumer Protection Act, chapter 19.86 RCW (CPA); and

6 **1.10.** Defendant, Great Lakes Window, Inc., having waived service of the Summons
7 and Complaint; and Washington, appearing by and through its attorneys, Robert M. McKenna,
8 Attorney General, and Jack G. Zurlini, Jr., Assistant Attorney General; and defendant Great Lakes
9 Window, Inc., appearing by and through its attorney Paul R. Gary, The Gary Law Group; and

10 **1.11.** Washington and Defendant having agreed on a basis for the settlement of the
11 matters alleged in the Complaint and to the entry of this Consent Decree relating to Defendant
12 without the need for trial or adjudication of any issue of law or fact; and

13 **1.12.** Defendant, by entering into this Consent Decree, does not admit the allegations of
14 the Complaint and specifically denies the allegations; and

15 **1.13.** Washington and Defendant agree this Consent Decree does not constitute
16 evidence of or an admission regarding the existence or non-existence of any issue, fact, or
17 violation of any law alleged by Washington and further agree that this Consent Decree shall not
18 be admissible in support of any claim against Defendant in any proceeding other than a
19 proceeding brought by Washington for the enforcement of this Consent Decree or the Consumer
20 Protection Act; and

21 **1.14.** Defendant recognizes and states this Consent Decree is entered into voluntarily
22 and that no promises or representations have been made by the Attorney General's Office or any
23 member, officer, agent, or representative thereof to induce it to enter into this Consent Decree,
24 except for the promises and representations provided herein; and

25 **1.15.** Defendant waives any right it may have to appeal from this Consent Decree; and
26

1 Energy Systems; Statewide Home Improvement; Statewide Vinyl, Inc.; Statewide Windows; and
2 Statewide Window & Siding, Inc.

3 2.4. This Consent Decree or the fact of its entry does not constitute evidence or an
4 admission by any party regarding the existence or non-existence of any issue, fact, or violation of
5 any law alleged by Washington.

6 2.5. This Consent Decree finally resolves all causes of action the Office of Attorney
7 General of Washington, Consumer Protection Division, has alleged or may have alleged against
8 Defendant, including its principals, officers, directors, agents, owners or employees, arising prior
9 to the date hereof and all causes of action arising out of the facts described in the Complaint filed
10 in this action, except that Defendant's failure to comply with this Consent Decree shall permit the
11 Attorney General of Washington to take such further action against Defendant and its officers,
12 directors, employees, servants, transferees, successors and assigns and all other persons in active
13 concert or participation with Defendant relating to any unfair or deceptive act or practice as
14 provided in this Consent Decree.

15 3. INJUNCTION

16 3.1. The injunctive provisions of this Consent Decree shall apply to Defendant and to
17 its officers, directors, employees, servants, transferees, successors and assigns and all other
18 persons in active concert or participation with Defendant.

19 3.2. Defendant shall immediately inform its officers and management level employees
20 of this Consent Decree by providing each such person with a copy of this Consent Decree on or
21 before the third business day after this Consent Decree has been entered by the Court. Defendant
22 shall also inform employees involved in marketing or sales of the prohibitions imposed on
23 Defendant's business practices by this Consent Decree, as outlined in paragraph 3.4 herein.

24 3.3. The following definitions shall apply to this Consent Decree:

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26 //

1 a. "Customer" or "customers" shall refer to any person who resides in
2 Washington State and with whom Defendant communicates for the purposes of selling
3 products or providing services.

4 b. "Advertise" or "Advertisement" shall refer to any direct or indirect
5 representation, communication or promotional device made or specifically authorized
6 by Defendant and used to market or promote the sale of its products or services and/or
7 to educate, inform or attract customers, including but not limited to those that are
8 telephonic, Internet-based, electronic, digital, oral, visual, aural, written, video or
9 printed.

10 3.4. On or after the 45th day after the Court enters this Consent Decree, Defendant and
11 its officers, directors, employees, transferees, successors and assigns and all other persons in
12 active concert or participation with Defendant, are enjoined, restrained, and prevented from
13 directly engaging in the following acts or practices within the state of Washington:

14 a. making or specifically authorizing false, unfair or deceptive advertising
15 claims about Defendant's window products, including but not limited to false claims
16 regarding the energy consumption savings or energy cost savings that will be achieved
17 by a customer that purchases Defendant's products; and

18 b. failing to contemporaneously possess a reasonable basis to substantiate
19 Defendant's advertising claims as required by law.

20 3.5. Defendant shall in good faith review and respond to written customer
21 complaints concerning matters addressed in paragraphs 3.4(a)-(b) submitted by an individual
22 customer or on behalf of an individual customer, such as by the Better Business Bureau or the
23 Washington State Attorney General's Office, within ninety (90) days of Defendant first
24 receiving the complaint. In addition, Defendant shall for the four (4) years following entry of
25 this Consent Decree keep records of each such complaint that at a minimum shall include the
26 identity of the customer along with his or her address, telephone number and email address if

1 available, a description of the complaint and of its resolution or other disposition. Defendant
2 shall also keep as part of these records all documents in its possession related to each such
3 complaining customer, including but not limited to customer contract files, for the same four
4 (4) year period. Defendant shall make the customer complaint records and related documents
5 available to Washington within thirty (30) days of first receiving written notice of
6 Washington's request to review them.

7 **4. ATTORNEY'S FEES AND COSTS**

8 **4.1.** Pursuant to RCW 19.86.080, Washington shall recover and Defendant, pursuant to
9 Section 8 of this Consent Decree, shall pay the costs and reasonable attorneys' fees incurred by
10 Washington in pursuing this matter in the amount of \$10,000.00.

11 **4.2.** Defendant's failure to pay attorneys' fees and costs to Washington as required
12 by this Consent Decree shall be a material breach of the Consent Decree.

13 **5. REIMBURSEMENT**

14 **5.1** Within sixty (60) days of the entry of this consent decree, Great Lakes will send a
15 letter ("Homeowner Letter") to the last known address of homeowners who purchased windows
16 and patio doors manufactured by Great Lakes and sold and installed by Penguin Windows during
17 the period from November 1, 2004, to November 1, 2009, as replacement for all windows and
18 patio doors in their residence in Washington State ("Homeowners"), who can be identified
19 through business records and who appear eligible for receiving the reimbursement described in
20 this Consent Decree. The Homeowner Letter, in the form of Exhibit A attached and incorporated
21 herein, provides the requirements for submitting a valid claim, including one claim per each
22 Homeowner who has not earlier submitted a claim to Penguin Windows or Great Lakes relating to
23 reimbursement under the fuel savings pledge made in conjunction with the Homeowner's
24 purchase of windows and patio doors. In the event of the return of a Homeowner Letter as
25 undeliverable, Great Lakes shall make a reasonable effort to locate the homeowner by Google
26 search or Accurant inquiry at the option of Great Lakes.

1 **5.2** Within thirty (30) days of the entry of this Consent Decree, Defendant shall have
2 reserved a fund of fifty thousand dollars (\$50,000.00) to be available for payment as
3 reimbursement, which fund shall be distributed to "Qualifying Homeowners," which shall mean
4 Homeowners who (a) filed a valid request pursuant to the Homeowner Letter within one hundred
5 twenty (120) days of the entry of this Consent Decree, (b) have not already had their case against
6 Penguin or Defendant decided by any court with respect to energy consumption savings or
7 energy cost savings claims made by Penguin or Defendant regarding Defendant's products, (c)
8 have not previously executed full and final releases in favor of Penguin Windows, Defendant or
9 any of its representatives encompassing the energy consumption savings or energy cost savings
10 claims regarding Defendant's products, and (d) meet the requirements set forth in the
11 Homeowner Letter. Qualifying Homeowners shall also include valid requests for reimbursement
12 or complaints received independent of the Homeowner Letter regarding the energy savings pledge
13 during the period of one hundred twenty (120) days from entry of this Consent Decree. Within
14 ninety (90) days after the one hundred twenty (120) day period ends, Defendant shall deliver an
15 accounting to Washington reflecting the requests for reimbursement received and paid both
16 pursuant to the Homeowner Letter and received independent of the Homeowner Letter regarding
17 the energy savings pledge during the one hundred twenty (120) day period beginning on the date
18 this Consent Decree is entered by the Court. Defendant shall include requests for reimbursement
19 meeting both the above stated criteria (per the Homeowner Letter and independent of the
20 Homeowner Letter) in its calculations when distributing the reimbursement funds. Distribution to
21 the Qualifying Homeowners shall be in the amount of \$100.00 per request up to 500 Qualifying
22 Homeowners, or, if more than 500 requests are received from Qualifying Homeowners on a pro
23 rata basis with a maximum payment of fifty thousand dollars (\$50,000.00).

24 **5.3** Qualifying Homeowners receiving reimbursement under this Consent Decree will
25 accept the reimbursement in full satisfaction and release of any claims or causes of action each
26 may have against Penguin Windows or Great Lakes relating to the fuel savings pledge or any

1 statements or representations made by Penguin or Defendant regarding the pledge, energy savings
2 or energy consumption.

3 **6. CIVIL PENALTIES**

4 **6.1.** Pursuant to RCW 19.86.140, Washington shall have and recover and Defendant
5 shall be liable for and shall pay civil penalties of \$25,000.00; however, all of the \$25,000.00 in
6 civil penalties is suspended as to Defendant on the condition the Defendant complies with all of
7 the provisions of this Consent Decree.

8 **6.2** In the event that the Court finds that Defendant is in material breach of any
9 provision of this Consent Decree, civil penalties of \$25,000.00 shall be unsuspended and assessed
10 against Defendant in an amount deemed proper by the Court after an evidentiary hearing on any
11 such material breach alleged by Washington.

12 **6.3.** Interest on any unpaid balance of civil penalties unsuspended and assessed by the
13 Court shall accrue at the rate of twelve percent (12%) per annum.

14 **6.4.** Defendant's failure to pay civil penalties to Washington as required by this
15 Consent Decree shall be a material breach of the Consent Decree.

16 **7. TERMS OF PAYMENT**

17 **7.1.** As set forth in Section 4, Defendant shall pay to Washington the total of
18 \$10,000.00 for costs and reasonable attorney's fees incurred by Washington in pursuing this
19 matter by making a first payment of \$5,000.00 on or before October 1, 2010, and a second
20 payment of \$5,000.00 on or before January 15, 2011, or at such other time as agreed to by
21 Washington in writing. Interest shall accrue at the rate of twelve percent (12%) per annum on any
22 late payment until such payment is made.

23 **7.2.** Defendant shall make all payments payable to the Attorney General - State of
24 Washington, and shall be mailed or delivered to the Office of the Attorney General, Consumer
25 Protection Division, 800 5th Avenue, Suite 2000, Seattle, Washington 98104-3188, Attention:
26 Cynthia Lockridge, unless otherwise agreed to in writing by Washington.

1 7.3. Defendant's failure to timely make payments as required by this Consent Decree,
2 without written agreement by Washington, shall be a material breach of this Consent Decree.

3 8. ENFORCEMENT

4 8.1. Defendant shall in good faith attempt to as soon as possible fully comply with the
5 injunctive provisions set out in paragraph 3.4 of this Consent Decree and shall be in full
6 compliance with each of these injunctive provisions no later than forty-five (45) days after the
7 date this Consent Decree is entered by the Court. In addition, Defendant shall be in compliance
8 with all other obligations this Consent Decree imposes on Defendant at the time it is entered by
9 the Court unless the Consent Decree specifically provides otherwise.

10 8.2. If after notice to Defendant and an opportunity to be heard at an evidentiary
11 hearing the Court finds by a preponderance of evidence that Defendant has violated a material
12 condition of this Consent Decree, Washington may seek imposition of additional conditions,
13 civil penalties, reimbursement, injunctive relief, attorney's fees, costs and such other remedies
14 as the Court may deem appropriate against Defendant. In any such action, the Court has
15 discretion to award the prevailing party its reasonable costs, including reasonable attorneys'
16 fees.

17 8.3. The violation of any term of this Consent Decree shall constitute a violation of the
18 Consumer Protection Act, RCW 19.86.020.

19 8.4. Jurisdiction is retained by this Court for the purpose of enabling any party to this
20 Consent Decree with or without the prior consent of the other party to apply to the Court at any
21 time for enforcement of compliance with this Consent Decree, to punish violations thereof, or
22 otherwise address the provisions of this Consent Decree.

23 8.5. Nothing in this Consent Decree shall be construed to limit or bar any other
24 governmental entity or person from pursuing other available remedies against Defendant or any
25 other person, except as described in paragraphs 2.5 and 5.3.
26

1 **8.6.** Under no circumstances shall this Consent Decree, or the name of the State of
2 Washington, the Pierce County Superior Court, the Office of the Attorney General, the
3 Consumer Protection Division, or any of their employees or representatives be used by
4 Defendant or any of its owners, officers, directors, employees, servants, transferees, successors
5 or assigns, in connection with any selling, advertising, or promotion of products or services, or
6 as an endorsement or approval of Defendant's acts, practices, or conduct of business.

7 **8.7.** Washington shall be permitted, upon advance notice of at least thirty (30) days
8 to Defendant, to access, inspect and/or copy, business records or documents in possession,
9 custody or under control of Defendant to monitor compliance with this Consent Decree,
10 provided that the inspection and copying shall avoid unreasonable disruption of Defendant's
11 business activities, and that the documents to be inspected or copied are within the scope and
12 limit of discovery as provided by CR 26 with respect to the subject matter of the injunctions
13 and Defendant's obligations under paragraphs 3.4 and 3.5 of this Consent Decree.

14 **8.8.** To monitor compliance with paragraphs 3.4, 3.5, 5.1-5.3 or 8.6 of this Consent
15 Decree, Washington shall be permitted to serve interrogatories pursuant to the provisions of
16 CR 26 and CR 33 and to question Defendant or any of its owners, officers, directors,
17 employees, servants, transferees, successors or assigns by deposition pursuant to the provisions
18 of CR 26 and CR 30, provided that Washington attempts in good faith to schedule the
19 deposition at a time and location convenient for the deponent and his or her legal counsel.

20 **8.9.** This Consent Decree in no way limits Washington from conducting any lawful
21 non-public investigation to monitor Defendant's compliance with this Consent Decree or to
22 investigate other alleged violations of the CPA, which investigation may include but is not
23 limited to secret shopping or interviewing customers or former employees of Defendant.
24 Defendant shall not be responsible for any fees or costs incurred by Washington in monitoring
25 compliance with the Consent Decree.

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8.10. Defendant shall cooperate with Washington and other civil regulatory agencies in any civil investigation of any other person who advertised, marketed, manufactured, or sold any of Defendant's products or services. Defendant also shall cooperate with Washington and other civil regulatory agencies in any civil investigation of any other officer or employee of Defendant who is alleged to have violated any of the provisions of this Consent Decree after having received the Consent Decree pursuant to paragraph 3.2 herein. Defendant's failure to cooperate as required by this paragraph 8.10 shall be a material breach of this Consent Decree.

8.11. This Consent Decree does not constitute evidence of or an admission regarding the existence or non-existence of any issue, fact, or violation of any law alleged by Washington and shall not be admissible in any court proceeding against Defendant other than a proceeding brought by Washington for the enforcement of this Consent Decree.

8.12. The Court finds that the entry of this Consent Decree and fulfillment of the terms of the reimbursement provided for herein satisfy the public interest as it may relate to representations regarding energy savings made by Penguin Windows or Defendant, including but not limited to any energy savings pledge and content thereof.

8.13. The Complaint is hereby dismissed with prejudice with respect to Defendant and this Consent Decree is entered pursuant to RCW 19.86.080.

8.14. The Clerk of the Court is ordered to enter the foregoing Consent Decree immediately.

DONE IN OPEN COURT this 2nd day of September, 2010.

Mark L. Gelman
Court Commissioner

JUDGE

1 Presented By:

2 ROBERT M. MCKENNA
3 Attorney General

4 By: *Jack G. Zurlini* #17930 for
5 JACK G. ZURLINI, JR., WSBA #30621
6 Assistant Attorney General
Attorneys for Plaintiff State of Washington

7
8
9 Notice of Presentment Waived and
10 Approved as to Form by:

11 THE GARY LAW GROUP
Attorneys for Great Lakes Window, Inc.

12
13 By: *Arsan Mackay* #41203
14 *for* PAUL R. GARY, WSBA #33392

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September , 2010

Mr. John Smith
123 Apple Lane
Pine Tree, WA 10101

Dear Homeowner:

Available records indicate that you may have owned the home at the address shown above at the time of the purchase and installation of Penguin Windows' window and patio door products between November 1, 2004 and November 1, 2009. Great Lakes Window, the manufacturer of the windows sold by Penguin Windows during this time frame, and the Washington State Attorney General's Office have reached an agreement relating to an energy savings pledge for windows sold by Penguin Windows that may entitle you to receive a partial reimbursement if you are a "qualifying homeowner."

This letter is intended only for those homeowners in Washington who purchased from Penguin Windows installation of a replacement of all (every) the existing windows and patio doors in their home, with the sole exception of basement windows, during this five-year time period ("complete replacement"). If you meet both these criteria, you may be a "qualifying homeowner."

During the above time frame, the Penguin Windows' sales approach for a complete replacement included a "40% Energy Savings Pledge." Great Lakes Window has agreed to reimburse qualifying homeowners a pro rata share of the agreed amount available for reimbursement not to exceed \$100 per home. The amount qualifying homeowners receive will depend upon the number of qualified claims submitted. To qualify for the reimbursement, you must formally represent to the Washington State Attorney General and Great Lakes Window that you have: (a) purchased and had windows and/or patio doors from Penguin Windows installed between November 1, 2004 and November 1, 2009 constituting a "complete replacement" of the windows and patio doors in the home which you owned and in which you resided during that time; (b) not previously submitted a claim requesting reimbursement based on the 40% Energy Savings Pledge; and (c) not sold the home within one year of installation of the windows. Your acceptance of a reimbursement will constitute full satisfaction and release of any claim with respect to the Energy Savings Pledge.

A claim for reimbursement must be received only from the qualifying homeowner, postmarked on or before December 1, 2010, by return of this completed form to the address shown on page 2. Also, if you have them available, enclose a copy of your purchase order, proof of payment and copy of the fuel pledge with your request for reimbursement. Your signature acknowledges that the information you submit is accurate.

Note: The Washington State Attorney General's Office and Great Lakes Window may pursue verification of the accuracy of all representations.

You may contact

if you have any questions.

Sincerely,
Great Lakes Windows

Cc: Washington Assistant Attorney General Jack Zurlini

detach here and return to Great Lakes Window

Qualifying Penguin Windows Customer information (complete responses are required to qualify for reimbursement)

Name: _____ Phone number: _____

Address: _____ Email (if available): _____

Date of completion of window installation: _____

During the period from November 1, 2004 through November 1, 2009, did you purchase Penguin Windows' windows or patio doors installed in your home as replacement for all pre-existing windows and patio doors in your home, with the sole exception of basement windows?
Y / N (circle one)

Are Copies of your Purchase Order, Fuel Pledge and Proof of Payment included?
Y / N (circle one)

Have you made a previous claim for reimbursement under 40% Energy Savings Pledge?
Y / N (circle one)

I acknowledge that acceptance of a reimbursement constitutes satisfaction and release of any claim with respect to the Energy Savings Pledge.

I verify the above to be true and correct:

Signature: _____
(print name)

Please return to:

Great Lakes Window
Attn:
Address