

IN THE CIRCUIT COURT OF COOK COUNTY
CHANCERY DIVISION

DEBORAH S. FISH, on behalf of herself)
and all persons similarly situated,)
)
Plaintiff,)
)
v.)
)
JEROME KRAUSE FASHION HAIR, INC.)
)
Defendant.)

10 CH 22745

Case No.

2010 JUN 27 11:10:47
CLERK OF COURT

CLASS ACTION COMPLAINT

NOW COMES DEBORAH S. FISH, ("SUZANNE") on behalf of herself and all others similarly situated, by and through her attorneys, Gold & Coulson, a partnership of professional and limited liability companies, and complaining against JEROME KRAUSE FASHION HAIR, INC. ("KRAUSE"), alleges, based on personal knowledge with respect to herself and her own acts and on information and belief, in part through investigation of counsel, as follows:

NATURE OF THE CASE

1. This a consumer class action based on deceptive practices relating to the marketing and sale of durable medical supplies to Illinois residents by KRAUSE. Plaintiff brings this action for violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.*, and for unjust enrichment.

2. Specifically, KRAUSE is engaged in the business practice of soliciting consumers to become customers of KRAUSE by deliberately misrepresenting that KRAUSE, as an in-network medical provider for United HealthCare ("UH"), will comply with UH's negotiated

discount with Krause so that UH insureds can take advantage of these contracted discounts when in fact KRAUSE refuses to honor the full contracted discounts.

3. KRAUSE has agreed to accept the UH negotiated discounts in return for UH steering of consumers to KRAUSE.

4. KRAUSE communicates these misrepresentations verbally and in writing.

5. KRAUSE knows that its negotiated UH discounts are relied upon by UH insureds. KRAUSE also knows its representations to consumers are false because it knows that those discounts are not honored.

6. A clear demonstration that KRAUSE knows that its representations about the discounts are false is the attached Exhibit 1, an Explanation of Benefits ("EOB"), where UH, in writing, says:

"Thank you for using a network physician or other health care professional. We have applied the contracted fee. The patient is not responsible for the difference between the amount charged by the physician or health care professional and the amount allowed by the contract, except in situations where there is an annual benefit maximum for this service. The patient is also responsible for any copay, deductible and coinsurance amounts."

7. After attracting a consumer to KRAUSE through false representations about discounts, KRAUSE requests that the consumer pay in full up front for a medical supply and then make a claim for refund to UH. After the consumer receives payment from UH, KRAUSE fails to return the difference between the amount it receives from the UH insured and the amount the UH insured receives from UH. Alternatively, KRAUSE will increase the price of a medical supply so that it is not subject to the 40% discount it negotiated with UH. Both the consumer and UH are victims of KRAUSE's fraudulent conduct.

8. The tactics employed by KRAUSE result in its obtaining payments of more than 60% of the sale price of the medical supply even though it has agreed to accept only 60% of the sales price.

9. The business conduct of KRAUSE clearly violates the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/2).

10. The business conduct of KRAUSE as described above is clearly a violation of the public policy of State of Illinois.

11. The business conduct of KRAUSE is also violating that Section of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/2) which prohibits the use of "unfair" acts or practices, including those that violate the public policy of Illinois, or are unconscionable or unfair or inflict substantial injury upon a "consumer."

PARTIES

12. Deborah Fish is a 45 year-old mother of three who resides in Illinois and suffers from alopecia areata caused by a thyroid disorder and/or the medication taken to treat this disorder. One of the manifestations of this condition is loss of hair.

13. Defendant KRAUSE is an Illinois corporation with its business at 9150 N. Crawford Avenue, Skokie, Illinois.

JURISDICTION AND VENUE

14. Jurisdiction of this Court is conferred by 735 ILCS 5/2-209. Venue is proper in the Circuit Court of Cook County pursuant to 735 ILCS 5/2-101.

FACTUAL BACKGROUND SPECIFIC TO SUZANNE

15. SUZANNE is a consumer insured by UH who, because of her medical condition, purchased a wig (Exhibit 2 attached) from KRAUSE as an in-network provider for UH. KRAUSE misrepresented to SUZANNE that after she purchased the wig described by Exhibit 2 she would receive reimbursement after receipt of Exhibit 3, a check for \$1,665.90 from UH. Thereafter, SUZANNE sought the balance refund from KRAUSE. She did so on many occasions but was refused.

16. In addition, as per Exhibit 2, KRAUSE charged SUZANNE a 10% sales tax as opposed to the 1% medical supply sales tax under Illinois law and has refused to return the difference.

CLASS ALLEGATIONS

17. Pursuant to 735 ILCS 5/2-801, Plaintiff brings this action on behalf of a class of similarly situated persons injured by KRAUSE's unfair and deceptive practices. The class is defined as follows:

"All consumers in Illinois who purchased medical supplies from KRAUSE and were insured by UH but paid more than 60% of the purchase price and/or were charged sales tax of 10% rather than 1%."

18. The Class members are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time, it is ascertainable through appropriate discovery. Plaintiff believes that hundreds, if not thousands, of consumers have been victimized by KRAUSE's unfair and deceptive practices during the relevant period.

19. Questions of law and fact are common to the Class and these common questions predominate over any questions affecting individual members.

20. Plaintiff will fairly and adequately protect the interests of the Class.

21. Plaintiff's counsel are experienced class-action attorneys.

22. A class-action is a superior method for the fair and efficient adjudication of this dispute.

COUNT I – CONSUMER FRAUD

23. Plaintiff re-alleges the allegations set forth above in paragraphs 1 through 22 as if fully set forth herein.

24. Count I is a class-action claim brought under the Illinois Consumer Fraud and Deceptive Business Practices Act (the "CFA"), 815 ILCS 501 *et seq.*

25. Defendants violated the CFA by:

- a. making written and/or oral misrepresentations that induced KRAUSE customers insured by UH to contract for medical supplies and pay more than 60% of the sales price; and
- b. charging more than 1% sales tax on medical supplies.

26. Because of the unconscionable practices of KRAUSE set forth above, Plaintiff and those she seeks to represent are entitled to actual damages in accordance with the CFA.

27. Defendants' deceptive, misleading, unfair or unconscionable practices set forth above were done willfully, wantonly, and maliciously entitling Plaintiff and those she seeks to represent and the Class to a punitive damage award.

COUNT II – Unjust Enrichment

28. Plaintiff re-alleges paragraphs 1 through 27 above as fully set forth herein and further states:

29. Defendant required UH consumers to pay more than 60% for purchased medical supplies. Thus, payment was based upon a false misrepresentation that Defendant's customers would have to only pay 60% (of the medical supplies) sales price.

30. It is inequitable for Defendants to retain either more than 60% of the purchase price of medical supplies sold to UH insureds or of more than 1% sales tax.

31. Defendant's unjust enrichment at the expense of the consumers has caused damage to Plaintiff and those she seeks to represent and a constructive trust on the monies wrongly taken should be imposed upon Defendant.

WHEREFORE, Plaintiff Deborah Fish, on behalf of herself and those she seeks to represent, prays that the Court:

- A. Certify a class in this case as described in ¶ 17 or such modified class definition as this Court deems appropriate, plus designate Deborah Fish as class representative and Gold & Coulson as class counsel;
- B. enter judgment against KRAUSE for Plaintiff and those she seeks to represent in an amount equal to the total KRAUSE has retained from sales to UH insureds in excess of 60% of the sales price or more than 1% sales tax to any consumer who purchased medical supplies;
- C. assess punitive damages against KRAUSE ;

- D. award Plaintiff and those she seeks to represent reasonable costs and attorney fees;
and
- E. grant such additional relief as the Court finds proper and just.

Respectfully submitted,



One of Plaintiff's Attorneys

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