

**COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL**

**UNSWORN AFFIDAVIT OF
JOHN M. ABEL**

I, John M. Abel, the undersigned, make this statement subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities:

A. Employment Background

1. I have been employed as an attorney in the Pennsylvania Office of Attorney General (“PA OAG”) since 1990, I’ve been with the Bureau of Consumer Protection (“BCP” or “Bureau”), Public Protection Division (“PPD”) of the Pennsylvania Office of Attorney General (“PA OAG”) since 1998. I currently hold the title of Chief Deputy Attorney General. I also previously held the titles of Deputy Attorney General and Senior Deputy Attorney General.
2. The official duties of the Bureau of Consumer Protection include, but are not limited to, investigating unfair and deceptive trade practices in violation of Pennsylvania’s *Unfair Trade Practices and Consumer Protection Law* (“UTPCPL”), 73 P.S. §§ 201-1, *et seq.*, and other consumer protection laws which fall under the jurisdiction of the Bureau of Consumer Protection.
3. The Bureau of Consumer Protection is acting within its “investigative power” and “official duties” when it performs investigative activities that stem from receipt of complaints, tips, or inquiries. The Bureau of Consumer Protection performs these functions pursuant to the UTPCPL and other consumer protection laws.
4. As an attorney for the Bureau of Consumer Protection, my duties include but are not limited to: a) overseeing and conducting investigations; b) reviewing and

analyzing consumer complaints and other documents to determine compliance with, or violations of, the UTPCPL and other consumer protection laws; and 3) securing settlements or initiating and prosecuting legal actions on behalf of the Commonwealth, in order to obtain consumer restitution, civil penalties, and injunctive relief.

B. Review of RTK Request Sean Connolly 2024-089

5. On March 19, 2024, BCP was cc'd on a RTK request from Sean Connolly wherein Mr. Connolly sought various records related to Toll Brothers and David Cutler Group.
6. The Bureau of Consumer Protection initiated investigations into Toll Brothers and David Cutler Group in 2017 and 2014 respectively.
7. The investigations were opened based, in part, on complaints from consumers that had purchased homes from Toll Brothers and David Cutler Group regarding, among other things, issues about defective stucco installation in new homes.
8. Based on the foregoing, BCP engaged in noncriminal investigations pursuant to the authority delegated to the Bureau under the UTPCPL, and performed a legal analysis to determine, to what extent, if any, Toll Brothers or David Cutler Group engaged in a pattern or practice of unfair or deceptive conduct in violation of the UTPCPL.
9. Certain of the records responsive to the request were obtained by the OAG through the issuance of administrative subpoenas pursuant to the Administrative Code. Section 307-3(b) of the Code provides that any records obtained by the OAG through this provision will not be disclosed to any person other than authorized

employees of the Attorney General absent a court order. 71 Pa. Stat. Ann. § 307-3(b)¹.

10. Regarding Toll Brothers, our team engaged in the following activities in connection with this investigation:

a. Issuing an access letter on March 29, 2018. The attorneys for Toll Brothers later requested a subpoena.

b. Issuing subpoenas in August of 2018 and April 2019, pursuant to the authority granted to the Attorney General by the above-referenced section of the Administrative Code, requesting records and information related to Toll Brother's business practices;

c. Reviewing and analyzing information and records relating to or provided by Toll Brothers regarding its business practices and employee information, contractor information, previous arbitrations and legal actions and previous complaints.

11. Regarding David Cutler Group, our team engaged in the following activities in connection with this investigation:

a. Issuing a subpoena on November 21, 2014.

b. Reviewing responses received by David Cutler Group.

c. Initiating, pursuing and ultimately settling a legal action against David Cutler Group in Common Pleas Court of Montgomery County on October 5, 2016.

¹ A recent amendment to the statute allows for the sharing of documents with other governmental agencies in limited instances; this does include sharing the documents with private parties. See 72 P.S. § 1601-U.

d. Filing a Proof of Claim in the Eastern District of Pennsylvania Bankruptcy Court.

12. Records obtained through the issuance of an administrative subpoena or those documents obtained, created or maintained outside of the administrative subpoena process are investigative and are protected from disclosure pursuant to the noncriminal investigative exemption of the Right to Know Law. Here, the records held by BCP regarding investigation into Toll Brothers and David Cutler Group include: consumer complaints and related communications, private lawsuits, correspondence to the attorneys for each company, correspondence to the courts, internal memoranda and spreadsheets containing investigative information.
13. Additionally, certain records pertaining to the aforementioned investigations include communications reflecting the mental impressions and/or legal research of BCP attorneys relevant to the progress of the BCP's investigations into Toll Brothers and David Cutler Group. These records include communications between BCP attorneys and counsel for both entities which contain dialogue regarding the scope of the BCP's investigation, requests for information and records. The records also include internal BCP memoranda in which BCP attorneys provided updates to superiors regarding their mental impressions and/or legal theories of the cases as the investigations progressed.
14. During the investigation, internal communications occurred among BCP employees which were deliberative in character and occurred before a final decision was made. These communications include discussions over email between OAG personnel, including attorneys, regarding findings from the BCP's review of the

investigative documents for both Toll Brothers and David Cutler Group, as well as appropriate next steps in the course of the investigation. The email communications also attach memoranda in which attorneys provided updates to superiors regarding the status of the ongoing investigation, shared certain critical investigative findings, and advised superiors of the forthcoming investigative actions to be taken. All such communications occurred prior to reaching a recommendation regarding the next steps to take in the investigation, or the appropriate resolution of the investigation.

15. Moreover, there are notes created by BCP employees (including BCP attorneys, as well as agents working at the direction or supervision of attorneys) concerning matters related to BCP's investigation into Toll Brothers and David Cutler Group regarding the faulty application of stucco which caused water infiltration into homes. These notes included analysis of certain critical documents uncovered in the course of the investigation which were identified as being particularly relevant to determining to what extent, if any, these companies engaged in a pattern or practice of unfair or deceptive conduct in violation of the UTPCPL. The notes were for the BCP employees' own use and for internal use within the BCP on this investigation. The notes were not shared outside of the OAG.
16. There were no outside investigators hired by the OAG to assist in either investigation.
17. Additionally, the BCP did not send agents to Upper Providence Police Department to speak to Detective Patrick Haines or Attorney Solicitor Joseph Bresnan
18. Moreover, the BCP did not interview any witnesses during the investigation into Toll Brothers or David Cutler Group.

19. The aforementioned documents and other records gathered by the BCP from Toll Brothers and David Cutler Groups and their attorneys, as well as our notes of meetings and calls, contain confidential information related to the investigations into these companies. After review, I have determined the total number of consumer complaints against Toll Brothers is 81.
20. Upon receiving the appeal from Sean Connolly, BCP conducted a secondary review and the records remain exempt for the reasons provided above.
21. In sum, disclosing the exempt records would effectively reveal the institution, progress, or result of the Bureau's investigation into these matters and expose the Bureau's underlying investigative materials, notes, and correspondence. If we were required to reveal details of the investigation with greater specificity than recited above, it is quite possible that investigative targets would become aware of our methodologies, concerns, and plans with respect to the investigation and/or other ongoing or future investigations. Any such disclosure weakens our ability to bring about justice by giving investigative targets access to strategic information to which the state and federal justice systems do not ordinarily grant access. This would not be fair or beneficial to the Commonwealth or, most importantly, to the consumers whom it serves.

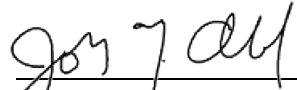
C. Conclusion

22. Permitting individuals outside of the OAG access to investigative materials of the Bureau would violate the very purpose and authority established by the law cited above.

23. Disclosure of the records in this matter would have a chilling and detrimental effect on the investigative process as a whole, particularly the David Cutler Group investigation which is still ongoing as the matter remains open in the Eastern District Bankruptcy Court.

May 31, 2024

By:



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