

Utah Division of Consumer Protection
160 East 300 South, Second Floor
PO Box 146704
Salt Lake City, UT 84114-6704
PH. (801) 530-6601/FAX (801) 530-6001

**BEFORE THE DIVISION OF CONSUMER PROTECTION
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

<p>IN THE MATTER OF:</p> <p>WASATCH VINYL FENCE CO. LLC, a Utah limited liability company;</p> <p>BRANDON MANSCILL, individually, and as an owner and operator of WASATCH VINYL FENCE CO. LLC;</p> <p>Respondents.</p>	<p>ADMINISTRATIVE CITATION</p> <p>DCP Legal File No. CP-2023-046 DCP Case Nos. 144083 and 145684</p>
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PURSUANT TO THE AUTHORITY granted by Utah Code § 13-2-6, which empowers the Division of Consumer Protection (Division) to issue a citation upon reasonable cause to believe a person has violated or is violating any statute listed in Utah Code § 13-2-1, it appears, upon information and belief, that you are in violation of the *Utah Consumer Sales Practices Act (CSPA)*, Utah Code § 13-11-1 *et seq.* and the *Utah Consumer Sales Practices Act Rule (CSPA Rule)*, Utah

Admin. Code R152-11-1 *et seq.* The Division incorporates by reference all information in the Notice attached to this Citation. The Division alleges:

RESPONDENTS

1. Wasatch Vinyl Fence Co. LLC, (WVFC) is a Utah limited liability company with a principal address of [REDACTED] Deweyville, UT 84309.
2. Brandon Manscill (Mr. Manscill) is the sole registered member/manager of WVFC.
3. The individual and business identified above will be referred to collectively as “Respondents.”
4. At all times relevant to this citation, Respondents operated a vinyl fence construction company in and around the state of Utah. At all times relevant to this Citation, Respondents did not have any professional licensure with the Utah Division of Professional Licensing, nor a business license in the city of Deweyville or Box Elder County.

BACKGROUND AND INFORMATION

SS Complaint

5. On or around April 14, 2023, Respondents entered into a transaction with SS (see Appendix A), a West Haven, Utah consumer, to install a vinyl fence at her residence for the total price of \$5,556.00. On that same day, SS paid the

full amount of \$5,556.00 on her debit card. Mr. Manscill represented that the project would begin on or around May 1, 2023, and be completed on or around May 5, 2023.

6. Respondents failed to arrive at SS's residence to begin the project on May 1, 2023, as previously agreed upon between the parties.
7. On May 2, 2023, Mr. Manscill contacted SS via text message and offered either a refund or a discount of \$200.00 to reschedule the installation. SS accepted the \$200.00 offer from Mr. Manscill to reschedule. SS agreed to a new start date of May 9, 2023, and a completion date of May 12, 2023. The parties later extended the completion date to May 15, 2023.
8. As of May 17, 2023, the project was still not complete. Respondents had also not provided the \$200.00 refund to SS. On or around May 29, 2023, Respondent contacted SS via text message and offered to increase the \$200.00 refund to \$250.00. SS accepted the new offer.
9. Prior to June 21, 2023, Respondents completed the installation of the fence. As of the date of this citation, Respondents have still failed to provide the \$250.00 refund that Respondents represented they would provide.

FDM Complaint

10. On or around May 15, 2023, Respondents entered into a transaction with a Syracuse, Utah consumer, FDM, (see Appendix A) for removal of an old wood fence and the installation of a new vinyl fence for the approximate price of \$12,000.00. On May 15, 2023, FDM paid a \$3,000.00 deposit to Respondents via a Venmo transfer. Respondents represented that the project would begin on May 31, 2023.
11. Respondents failed to begin the FDM project on May 31, 2023. On or around June 1, 2023, Respondents offered FDM the option to cancel the transaction and receive a refund of the \$3,000.00 deposit. FDM agreed to cancel the transaction and receive a refund of the deposit.
12. On June 9, 2023, Respondents reiterated in a messaging exchange that the deposit would be refunded and that he would be in touch with FDM on the following Monday, 06/12/2023 with a better timeline. After an escalated exchange, Respondent advised FDM not to contact him again and that his deposit would be dropped off at the Police Department.
13. On June 12, 2023, FDM sent a message offering to work through Respondent's attorney to get the refund but received no response.
14. On July 3, 2023, after not receiving the refund, FDM filed a Small Claim case against Respondents in an attempt to get his money back.

15. As of the date of this Citation, Respondents have failed to provide a refund of the \$3,000.00 deposit.

COUNT 1

16. Respondents knowingly or intentionally represented to SS that they would provide a remedy in the form of a \$250.00 refund if SS agreed to a later installation date. SS agreed to a later delivery date and a refund of \$250.00. Respondents have failed to provide the \$250.00 refund to SS that Respondents were obligated to provide based on the previous agreement.
17. The above actions violate the CSPA, Utah Code § 13-11-4(2)(j), which states:

(2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or practice if the supplier knowingly or intentionally:

...

(j)(i) indicates that a consumer transaction involves or does not involve a warranty, a disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if the representation is false; or

(ii) fails to honor a warranty or a particular warranty term;

18. **The above actions are alleged as one violation of the above-referenced statute, with a maximum potential fine of up to \$2,500.00 per violation.**

COUNT 2

19. After knowingly or intentionally receiving payment from FDM, Respondents failed to deliver the products and services in the time represented. Respondents then offered the consumer the right to cancel and receive a refund. Respondents failed to provide the refund within 10 business days.

20. The above actions violate the CSPA, Utah Code § 13-11-4(2)(i), which states:

(2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or practice if the supplier knowingly or intentionally:

(i) after receipt of payment for goods or services, fails to ship the goods or furnish the services within the time advertised or otherwise represented . . . unless within the applicable time period the supplier provides the buyer with the option to:

(i) cancel the sales agreement and receive a refund of all previous payments to the supplier if the refund is mailed or delivered to the buyer within 10 business days after the day on which the seller receives written notification from the buyer of the buyer's intent to cancel the sales agreement and receive the refund; or
(ii) extend the shipping date to a specific date proposed by the supplier.

The above actions are alleged as one violation of the above-referenced statute with a maximum potential fine of up to \$2,500.00 per violation.

COUNT 3

After offering to cancel the transaction and refund FDM the deposit, Respondents failed to provide a refund of the deposit within 30 days of the request for a refund.

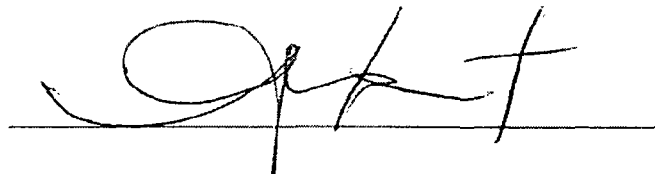
The above actions violate the CSPA Rule, Utah Admin. Code R152-11-10(C):

C. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier who has accepted a deposit and has received from the consumer within a reasonable time a valid request for refund of the deposit to fail to make the refund within 30 calendar days after receipt of such request.

21. **The above actions are alleged as one violation of the above-referenced statute, with a maximum potential fine of up to \$2,500.00 per violation.**

Total Alleged Counts: 3
Total Potential Fine: \$7,500.00

THIS CITATION ISSUED this 16 day of August, 2023.

A handwritten signature in black ink, appearing to read 'Amy Callaway', is written over a horizontal line.

Amy Callaway – Investigator
UTAH DIVISION OF CONSUMER PROTECTION

Appendix A

Consumer Name	Consumer Initials	City of Residence	State of Residence
[REDACTED]	SS	[REDACTED]	UT
[REDACTED]	FDM	[REDACTED]	UT

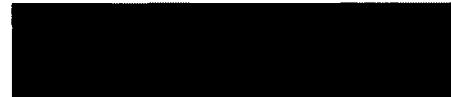
CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing document on the parties of record in this proceeding set forth below by mailing a copy thereof, properly addressed by first class mail and certified mail with postage prepaid, to:

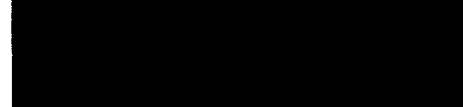
WASATCH VINYL FENCE CO LLC



BRANDON MANSCILL



BRANDON MANSCILL



Dated this 16 day of August, 2023.

A handwritten signature in black ink, appearing to read 'Amy Callaway', written over a horizontal line.

Amy Callaway – Investigator
UTAH DIVISION OF CONSUMER PROTECTION

NOTICE - IMPORTANT - READ CAREFULLY

This citation may be contested by filing a request for review, in writing, within 20 days of issuance of this citation. Following receipt of a request for review, an informal hearing will be scheduled before the State of Utah, Department of Commerce, Division of Consumer Protection pursuant to Utah Code § 63G-4-203, Procedures for Informal Adjudicative Proceedings. The purpose for the hearing is a review of the citation for factual and legal sufficiency and other questions to be determined by the presiding officer.

A citation that is not contested becomes the final default order of the Division. A defaulted party may make a motion to the presiding officer to set aside a default. Utah Code § 63G-4-209(3). The defaulted party may seek agency review pursuant to Utah Code § 63G-4-301, or reconsideration pursuant to Utah Code § 63G-4-302, only of the presiding officer's decision on the motion to set aside the default. See Utah Code § 63G-4-209(3)(c).

In addition to any fines that may be levied, a cease and desist order may be entered against you. An intentional violation of a final cease and desist order is a third degree felony. Utah Code § 13-2-6(2).

To request a review of the citation, please send your written request for review to:

DCPlcgal@utah.gov

or by mail to:

Katherine Hass – Director
Utah Division of Consumer Protection
PO Box 146704
Salt Lake City, UT 84114-6704

The presiding officer designated by the Director of the Division of Consumer Protection to conduct the hearing in your case is:

Nathaniel Gallegos, Administrative Law Judge
Heber M. Wells Bldg., 2nd Floor
160 East 300 South
Salt Lake City, UT 84114
Telephone: (801) 531-6706

A copy of Utah Admin. Code R477-101, Administrative Law Judge Conduct Committee, is available online at <https://rules.utah.gov/publicat/code/r477/r477-101.htm>.

Please be advised that all inquiries, correspondence, or other contacts concerning this citation, with the exception of any written request for review as set out above, should be directed to the below-named Division employee, designated by the Director of the Division of Consumer Protection pursuant to Utah Code § 13-2-6(3):

Amy Callaway – Investigator
Utah Division of Consumer Protection
PO Box 146704
Salt Lake City, UT 84114-6704
Telephone: (801) 530-6601

FREQUENTLY ASKED QUESTIONS

1. **How can I talk to someone at the Division about this citation?** The name of the investigator assigned to your case appears at the end of your citation. If you call the Division, 801-530-6601 and press 0, the receptionist can help transfer you to the assigned investigator.
2. **Can I resolve the citation without a hearing?** Contact the investigator assigned to your case if you are interested in a settlement to see if a settlement is possible in your case.
3. **How do I respond to the citation?** You may challenge the citation by submitting a written Request for Review using the attached form or using your own form.
4. **How long do I have to respond to the citation?** You have 20 calendar days from issuance of the citation to submit a Request for Review.
5. **What happens after I submit a Request for Review?** The presiding officer will send you a Notice of Administrative Hearing specifying a time, date, and location of a hearing before the Division.
6. **Who will preside over the case?** The name of the presiding officer for the hearing will be on your Notice of Administrative Hearing. Please address the presiding officer by name (e.g., "Judge Smith"). You may contact the presiding officer with any technical or procedural questions, but the presiding officer may not discuss the merits of the case with you.
7. **What if I have a scheduling conflict with the scheduled hearing time?** Failure to attend a hearing may result in a default and entry of judgment against you. You may ask the presiding officer assigned to your case, in writing, to reschedule the hearing if you have a conflict or require more time to prepare. A request for additional time is within the discretion of the presiding officer and may not be granted, particularly if requested only shortly before the scheduled hearing.
8. **What should I expect at a hearing?** An administrative law judge will act as the presiding officer and direct the proceeding. The hearing room has two tables for the parties, with the presiding officer sitting at the front of the hearing room. Generally, you (and your counsel, if applicable) will sit at one of the tables and Division staff will sit at the other table. Beginning with the Division, both sides will have an opportunity to present witnesses, evidence, and argument in support of why the citation should or should not stand.
9. **What kind of evidence can I present?** All parties may testify, present evidence, and comment on the issues. In presenting evidence, any party may examine witnesses and submit exhibits. At the request of either party, or at his or her own initiative, the presiding officer may also choose to examine a witness. Any party may ask to present a witness by telephone. The presiding officer may exclude any evidence he or she deems irrelevant, immaterial, or unduly repetitious or improper.
10. **How can I determine what evidence the Division has?** Discovery is prohibited in informal hearings, but parties may request information contained in the agency's files to the extent permitted by law. You may contact the assigned investigator to request access to this information.
11. **What is the burden of proof for the Division at a hearing?** Generally, the Division is responsible to prove its case against you by substantial evidence.
12. **Must I have an attorney?** You may represent yourself or be represented through an attorney. You may also represent a business that you own or manage.

You should not rely on this letter alone for instructions regarding hearings. The hearing is governed by law (including the Administrative Procedures Act, *see* Utah Code § 63G-4 *et al.*, Utah Division of Consumer Protection, *see* Utah Code § 13-2 *et al.*, and Department of Commerce Administrative Procedures Act Rules, *see* Utah Admin. Code R151-4.) You may access these laws and rules at le.utah.gov and rules.utah.gov.



DIVISION OF CONSUMER PROTECTION

Heber M. Wells Building
160 East 300 South
PO Box 146704
Salt Lake City, UT 84114-6741
Telephone: (801) 530-6601
Fax: (801) 530-6001

REQUEST FOR REVIEW

DCP Legal File No.		Date of Citation:	
Name:		Phone: ()	
Address:			
City:	State:	Zip:	
Email:			

Requests for review must be received by the division within 20 calendar days of issuance of the citation. Utah Code § 13-2-6(3). If you fail to make a timely request, the citation shall become the final order of the division. If you represent multiple respondents, please submit a separate request for each respondent.

You may wish to consult an attorney before submitting this form and any attachments.

Select only one of the following:

- I admit to the statutory violation(s) described in the citation. The presiding officer will enter an order, assess a fine, and issue a cease and desist order.
- I admit to the statutory violation(s) described in the citation, but request a hearing to explain the circumstances of the violation(s) and request a reduced fine. *(If desired, attach a brief typewritten explanation of the circumstances of the violations. The presiding officer may ask you to submit an additional response.)*
- I contest the occurrence of the violation(s) described in the citation and request a hearing to contest the citation. *(If desired, attach a brief typewritten response to the allegations in the citation. The presiding officer may ask you to submit an additional response.)*

I certify that I have knowingly and voluntarily made the above election of rights. I understand that if I request a hearing the presiding officer will notify me in writing of the hearing date. If I fail to appear at the hearing, a default judgment may be entered against me. I acknowledge that I have either sought the advice of an attorney or have voluntarily chosen not to do so.

Signature	Date of Signature
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