

Utah Division of Consumer Protection
160 East 300 South, Second Floor
PO Box 146704
Salt Lake City, UT 84114-6704

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

IN THE MATTER OF:

KENNETH A SMITH, also known as
KENNY SMITH, an individual doing
business as **PROFESSIONAL POOL
COVERS**;

Respondent.

FINAL DEFAULT ORDER

**DCP Legal File No. CP-2023-030
DCP Case No. 131924**

Kenneth Smith, also known as Kenny Smith, an individual doing business as Professional Pool Covers (“Respondent”) has not participated in this adjudicative proceeding by failing to file a request for a hearing, after having been duly served with the Citation in this matter.¹ As a consequence thereof, the presiding officer enters the default of the Respondent pursuant to Utah Code § 63G-4-209(1)(a). Where Respondent has failed to timely contest and request a review of the Citation initiated by the Division of Consumer Protection (the “Division”), the Citation becomes the final order pursuant to Utah Code § 13-2-6(3)(f).

The Division asserts the following:

¹ Pursuant to Utah Code § 63G-4-201(2)(b), service is made by regular U.S. mail or by email. The Citation in this matter was mailed by registered mail to the addresses referenced in the Certificate of Service. The Respondent signed a receipt for the certified mail for the Citation sent to the business and for the individual on July 31, 2023.

1. Kenneth A Smith (Respondent) is an individual and resident of Salt Lake City, Utah. Respondent previously registered to do business as Professional Pool Covers. That registration expired on June 24, 2021.
2. Respondent installs and repairs pool covers for consumers along the Wasatch Front.
3. The consumer called Respondent on or around June 11, 2022. Respondent told the consumer that Respondent was the new owner of the Professional Pool Covers and Respondent would be able to help him.
4. Respondent came to the consumer's home and determined that the pool cover's motor was fine but the gear box was not working.
5. Respondent removed the gear box and returned to his place of business to work on the gear box.
6. Respondent returned with the repaired gear box and installed it on the consumer's pool cover.
7. Respondent tested the pool cover and it closed properly but would not open.
8. Respondent told the consumer that the pool cover box would need to be rebuilt and quoted \$650 for the rebuild of the pool cover box. The consumer paid \$450 to Respondent by personal check. Of the \$450 payment, \$300 was applied to the repair of the gear box and \$150 was for materials to begin the pool cover box repair.
9. The consumer stated that he tried contacting the Respondent multiple times without a response. The consumer stated that Respondent never returned to rebuild the pool cover. Respondent failed to finish the materials and return to rebuild the pool cover box.

COUNT 1

10. The consumer paid \$150 to Respondent to purchase materials to begin the rebuild of the pool cover box. Respondent did not deliver the materials nor return to repair the pool cover box.
11. The above actions violate the Utah Consumer Sales Practices Act ("CSPA"). Utah Code § 13-11-4(2)(f):
- (2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or practice if the supplier knowingly or intentionally:
- ... (f) after receipt of payment for goods or services, fails to ship the goods or furnish the services within the time advertised or otherwise represented or, if no specific time is advertised or represented, fails to ship the goods or furnish the services within 30 days, 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
12. 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.

ORDER

The Respondent is ordered to cease and desist from any act in violation of the *Utah Consumer Sales Practices Act*, Utah Code § 13-11-1 *et seq.*

Pursuant to Utah Code § 13-2-6(2), a person who has notice of this final cease and desist order and intentionally violates any provision contained therein is guilty of a third degree felony.

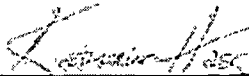
Kenneth Smith, also known as Kenny Smith, an individual doing business as Professional Pool Covers, is ordered to pay an administrative fine in the amount of \$2,500 for one (1) violation of the *Utah Consumer Sales Practices Act*, Utah Code § 13-11-1 *et seq.*

This fine may be filed and entered with the appropriate court as a civil judgment.

This order shall be effective on the signature date below.

DATED: 1 September 2023

UTAH DIVISION OF CONSUMER PROTECTION



KATHERINE HASS, DIRECTOR

NOTICE

Pursuant to Utah Code § 63G-4-209, a defaulted party may seek to have the agency set aside the default order, and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure. A motion to set aside a default and any subsequent order shall be made to the presiding officer.

A defaulted party may seek agency review under Utah Code § 63G-4-302, only on the decision of the presiding officer on the motion to set aside the default.

CERTIFICATE OF SERVICE

I certify that I have this day: 9/5/2023, 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, to:

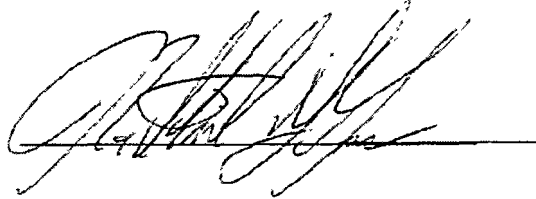
PROFESSIONAL POOL COVERS
KENNY SMITH
[REDACTED]
SOUTH SALT LAKE, UT 84115

And by email to the Division at:

Steven Petersen, Investigator
spetersen@utah.gov

Adam Watson, Chief investigator
awatson@utah.gov

Kim Wheeler, Administrator
dcplegal@utah.gov

A handwritten signature in black ink, appearing to be 'Kim Wheeler', written over a horizontal line.