

**CIVIL CASE INFORMATION STATEMENT
CIVIL CASES
In the Circuit Court, Logan County, West Virginia**

I. CASE STYLE:

Plaintiff/Petitioner,

Case # *16-C-152*

STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY,
ATTORNEY GENERAL,

Judge *H. H. HEN*

v.

Defendant/Respondent.	<u>Days to Answer</u>	<u>Type of Service</u>
TOMMY KENNEDA, Individually and d/b/a T & N Monuments	20	Personal

RECEIVED & FILED
2016 JUL 14 A 10:31
VICKIE KOLOTA
CIRCUIT CLERK
LOGAN COUNTY

PLAINTIFF: STATE OF WEST VIRGINIA ex rel. PATRICK MORRISEY, ATTORNEY GENERAL DEFENDANTS: TOMMY KENNEDA, Individually and d/b/a T & N Monuments	CASE NUMBER: <i>16-C-152</i>
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II. TYPE OF CASE:

TORTS	OTHER CIVIL

Asbestos	Adoption	Appeal from Magistrate Court
Professional Malpractice	Contract	Petition for Modification of Magistrate Sentence
Personal Injury	Real Property	Miscellaneous Civil
	Mental Health	X Other
Other Tort	Appeal of Administrative Agency	

III. JURY DEMAND: Yes No X

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): N/A

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE?

 YES NO X

IF YES, PLEASE SPECIFY:

- Wheelchair accessible hearing room and other facilities
- Interpreter or other auxiliary aid for the hearing impaired
- Reader or other auxiliary aid for the visually impaired
- Spokesperson or other auxiliary aid for the speech impaired
- Other: _____

Attorney Name: Douglas L. Davis, Assistant Attorney General
 (State Bar No. 5502)
Firm: State of West Virginia, Attorney General's Office
Address: Post Office Box 1789, Charleston, WV 25326-1789
Telephone: (304)558-8986

Representing:
 X Plaintiff/Petitioner Defendant
 Cross-Complainant Cross-Defendant

Dated: 7-14-16


Signature

IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA *ex rel.*
PATRICK MORRISEY,
ATTORNEY GENERAL,

Plaintiff,

v.

Civil Action No. 16-C-152

TOMMY KENNEDA,
Individually and d/b/a
T & N Monuments

Defendant.

RECEIVED & FILED
2016 JUL 14 A 10:31
VICKIE HOLOTA
CIRCUIT CLERK
LOGAN COUNTY

COMPLAINT AND PETITION FOR
PRELIMINARY AND PERMANENT INJUNCTION

This action is brought pursuant to the provisions of the West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-1-101, *et seq.* (hereinafter “the Act”), which authorizes the Attorney General of West Virginia to file enforcement actions. The State of West Virginia, by and through its duly elected Attorney General, Patrick Morrisey (hereinafter “the State”), the plaintiff in this matter, has reason to believe that the above-named Defendant, Tommy Kenneda, individually and as sole proprietor of T & N Monuments (hereinafter referred to as “Kenneda”), has violated the Act.

I.
PARTIES

1. The State, by and through the Attorney General, is authorized to bring this action pursuant to the Act.
2. Upon information and belief, Tommy Kenneda is an individual residing in Logan County at 2784 Buffalo Creek Road, Braeholm, West Virginia 25607.

3. Upon information and belief, Tommy Kenneda owns and operates T & N Monuments as a sole proprietorship from his residence at 2784 Buffalo Creek Road, Braeholm, West Virginia 25607.

II.
JURISDICTION AND VENUE

4. This Court has jurisdiction to hear this matter pursuant to Article VIII, Section 6 of the West Virginia Constitution, W. Va. Code § 51-2-2, and W. Va. Code § 53-5-3.

5. Venue is proper in this Court pursuant to W. Va. Code § 46A-7-114 and W. Va. Code § 56-1-1(a)(6).

III.
FACTS COMMON TO ALL CAUSES OF ACTION

6. Kenneda operates a business, T & N Monuments, which sells gravestones, headstones, and other monuments to individuals (“consumers”).

7. Kenneda also installs monuments in cemeteries for consumers.

8. In 2014, the State commenced an investigation of Kenneda’s business practices after receiving a number of complaints from consumers that Kenneda had taken their money and had not constructed, engraved, delivered or installed the promised cemetery monuments.

9. West Virginia consumers and others contact Kenneda for the sale and installation of cemetery monuments.

10. After West Virginia consumers and others contact Kenneda, he meets consumers at his home and place of business to enter into contracts with them.

11. Kenneda enters into contracts with West Virginia consumers and others to provide cemetery monuments, including the ordering, engraving and installation of the

monuments. *See* Affidavits of Rose Hatfield and Charlotte Osborne attached hereto as Exhibits 1 and 2, respectively.

12. West Virginia consumers and others who enter into contracts with Kenneda are required to pay an initial down payment of half or sometimes the entire cost. *See* Exhibits 1 and 2.

13. Kenneda frequently fails to meet agreed upon deadlines to complete contracted cemetery monument work.

14. Kenneda frequently fails or refuses to answer consumers' telephone calls or return customers' messages regarding delays.

15. Consumers frequently cannot contact Kenneda to discuss completing the promised work or refunding their deposits.

16. In some cases, Kenneda orders and engraves the monument and then fails to install the monument on the gravesite.

17. Sometimes, Kenneda takes a deposit of money and then fails to do the cemetery monument work altogether.

18. Kenneda willfully and repeatedly engaged in the conduct described in this complaint.

19. By way of example, the following allegations involving two consumers are representative of Kenneda's conduct.

Rose Hatfield

20. Rose Hatfield is a resident of Coal Mountain, Wyoming County, West Virginia.

21. Hatfield sought a monument for her deceased father's grave.

22. In early November, 2014, Hatfield met with Kenneda at his home and place of business to buy a cemetery monument and have it installed.

23. That day, Hatfield agreed to purchase an engraved monument from Kenneda, and paid Kenneda to install the monument at Hatfield's deceased father's grave. *See* Exhibit 1, Hatfield Affidavit, ¶¶ 2-4.

24. The total cost of the monument and installation was \$525.00.

25. Hatfield paid Kenneda \$525.00 in cash that day for Kenneda's services. *See* Exhibit 1, Hatfield Affidavit, ¶¶ 3 and 4.

26. Kenneda promised Hatfield that the monument would be completed and installed by the end of November, 2014.

27. The monument was not installed by the end of November, 2014.

28. Over the next several months, Hatfield attempted to contact Kenneda by phone and by e-mail. He did not answer her calls or respond to her messages.

29. In August, 2015, Kenneda told Hatfield by phone that he was working on the monument and promised Hatfield it would be installed soon.

30. On January 22, 2016, Hatfield filed a complaint against Kenneda with the West Virginia Attorney General's Office because Kenneda had not completed her monument and he would not refund her money. *See* Exhibit 1, Hatfield Affidavit.

31. In late March or early April 2016, Hatfield called Kenneda. He told her that the monument was near completion, and it would be installed in about two weeks. The monument was not installed at that agreed upon date.

32. To date, Kenneda has failed to complete and install the monument.

33. To date, Kenneda has failed to refund Hatfield's money.

Charlotte Osborne

34. Charlotte Osborne is a resident of Cyclone, Wyoming County, West Virginia.
35. Osborne sought a double-headstone monument for her deceased husband's and her grave.
36. In April, 2015, Osborne met with Kenneda at his home and place of business to buy a double-headstone monument and have it installed.
37. That day, Osborne agreed to purchase a double-headstone monument from Kenneda. Osborne paid Kenneda for the monument that would be set in place at the Osbornes' gravesite. *See* Exhibit 2, Osborne Affidavit, ¶¶ 2-4.
38. The total cost of the engraving and installation was \$2,400.00.
39. Osborne paid Kenneda \$1,200.00 that day, with the remaining balance to be paid upon completion of the installation of the monument. *See* Exhibit 2, Osborne Affidavit, ¶¶ 3 and 4.
40. Kenneda promised Osborne the monument and installation would be completed by late May, 2015.
41. The monument was not set in place by the agreed upon date.
42. In July or August, 2015, Osborne stopped by Kenneda's home to ask about the monument. A woman answered the door and said Kenneda was not at home. Kenneda did not contact Osborne afterwards.
43. Over the next several months, Osborne attempted to contact Kenneda by phone to ask for a refund. Kenneda did not answer her calls or return her messages.
44. Osborne was forced to purchase another monument from a different company.
45. Kenneda has not contacted Osborne since first accepting her initial deposit.

46. To date, Kenneda has failed to complete the monument and set it in place.

47. To date, Kenneda has failed to refund Osborne's money.

FIRST CAUSE OF ACTION
(Creating a likelihood of confusion or misunderstanding among consumers
by failing to perform the contract)

48. The State repeats and reasserts the facts and allegations set forth in paragraphs numbered 1 through 47 above as if each were set forth herein in its entirety.

49. Kenneda enters into contracts with consumers to obtain, make, personally engrave, and set cemetery monuments in place at gravesites in cemeteries.

50. Kenneda demands and receives full or partial payment for the purchase and placement of cemetery monuments.

51. Kenneda fails to provide, or substantially provide, goods and services promised in contracts with West Virginia consumers.

52. Kenneda fails to return or refund deposits for undelivered goods and work not done.

53. Kenneda causes much confusion among consumers who have paid money and expect to see their cemetery monuments on their loved ones' gravesites.

54. The West Virginia Consumer Protection Act makes unlawful "unfair or deceptive acts or practices in the conduct of any trade or commerce." W. Va. Code § 46A-6-104.

55. Conduct which creates likelihood of confusion or of misunderstanding among consumers is an unfair or deceptive act or practice. W. Va. Code § 46A-6-102(7)(L).

56. Kenneda fails to deliver cemetery monuments to consumers, even if they have paid for them in full, or part, in violation of the Act. W. Va. Code § 46A-6-104 as defined by W. Va. Code § 46A-6-102(7)(L).

57. Kenneda fails to install cemetery monuments, even after consumers have paid for the services in full, or part, in violation of the Act. W. Va. Code § 46A-6-104 as defined by W. Va. Code § 46A-6-102(7)(L).

SECOND CAUSE OF ACTION

(Engaging in an act of deception, fraud, false pretense, false promise or misrepresentation in the sale or advertisement of any services)

58. The State repeats and reasserts the facts and allegations set forth in paragraphs numbered 1 through 57 above as if each were set forth herein in its entirety.

59. Kenneda frequently promises to complete, deliver, or install cemetery monuments by specific dates.

60. Kenneda frequently fails to complete, deliver, or install cemetery monuments by the promised delivery dates.

61. Kenneda frequently fails to complete, deliver, or install cemetery monuments altogether and stops working on consumers' monuments for long periods of time, even after consumers have paid for the services in full.

62. The West Virginia Consumer Protection Act makes unlawful "unfair or deceptive acts or practices in the conduct of any trade or commerce." W. Va. Code § 46A-6-104.

63. Engaging in an act of deception, fraud, false pretense, false promise, or misrepresentation in connection with the sale or advertisement of any services is an unfair and deceptive act or practice. W. Va. Code § 46A-6-102(7)(M).

64. Promising to complete, deliver, or install cemetery monuments, frequently failing to meet promised deadlines, and stopping work on consumers' monuments for long periods of time is an act of deception and a false promise in violation of the Act. W. Va. Code § 46A-6-104, as defined by § 46A-6-102(7)(M).

PRAYER FOR RELIEF

WHEREFORE, The State of West Virginia requests that this Court:

A. Conduct a hearing on this matter as soon as possible pursuant to W. Va. Code § 46A-7-110.

B. Grant an immediate preliminary injunction without bond pursuant to W. Va. Code § 46A-7-110 by:

1. Enjoining Kenneda from engaging in the sale of any cemetery monument or service of any kind in the State of West Virginia;

2. Enjoining Kenneda from transferring or conveying any real or personal property in his custody or control to any third party until this matter has been finally adjudicated; and

3. An Order compelling Defendants to provide the Attorney General, within 14 calendar days of entry of the Order, with sufficient documents identifying all of his customers since January 1, 2013, relating to the sale, engraving and/or installation of cemetery monuments, providing the customers' names, addresses, telephone numbers, dates of purchase, and the amounts paid.

C. Upon final hearing:

1. Enter judgment in favor of the State and against Kenneda and order Kenneda to pay restitution to all aggrieved consumers;

2. Enter an Order permanently enjoining Kenneda from advertising, selling or installing cemetery monuments in the State of West Virginia;

3. Enter an Order permanently enjoining Kenneda from violating the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-1-101 *et seq.*,

generally, and specifically from engaging in unfair or deceptive acts or practices in the conduct of trade or commerce as defined by W. Va. Code § 46A-6-104 and W. Va. Code § 46A-6-102(7)(L) and (M);

4. Enter judgment in favor of the State against Kenneda and order Kenneda to pay a civil penalty in the amount of five thousand dollars (\$5,000.00) for each and every willful and repeated violation of Chapter 46A of the West Virginia Code that he committed, as provided in W. Va. Code § 46A-7-111(2)

5. Enter judgment against and order Kenneda to pay to the State of West Virginia all its attorney fees, court costs, investigation costs, and all other costs associated with the maintenance and prosecution of this action; and

6. Grant such other and further relief as the Court deems just and appropriate.

Respectfully submitted:

STATE OF WEST VIRGINIA, ex rel.
PATRICK MORRISEY,
ATTORNEY GENERAL

By Counsel



Douglas L. Davis, WV Bar No. 5502
Office of the Attorney General of West Virginia
Consumer Protection/Antitrust Division
Post Office Box 1789
Charleston, West Virginia 25326-1789
Telephone: (304) 558-8986
Facsimile: (304) 558-0184
douglas.l.davis@wvago.gov

AFFIDAVIT

STATE OF WEST VIRGINIA,
COUNTY OF WYOMING, TO-WIT:

I, Rose Hatfield, being over the age of eighteen (18) years, do hereby aver as follows:

1. I am a resident of Coal Mountain, Wyoming County, West Virginia.
2. On or about November 8, 2014, I met with Tommy Kennedy d/b/a T & N Monuments (T&N) at his home and place of business in Logan County, West Virginia to purchase a monument for my father's grave.
3. The cost of the monument, engraving, and setting the monument on the grave was \$525.00.
4. I paid Kenneda \$525.00 in cash that day. A true and accurate copy of the receipt is attached hereto as Exhibit A.
5. Kenneda promised me the monument would be completed and set in place by the end of November, 2014.
6. The monument was not set in place by the agreed upon date.
7. Over the following months, I attempted to contact Kenneda by phone and by e-mail. He did not answer my calls or return my messages.
8. On or about August 1, 2015, Kenneda told me by phone that he was working on the monument and promised me it would be set in place soon.
9. In late March or early April, Kenneda promised me, by phone, that the monument was near completion, and it would be up in about two weeks.
10. Kenneda has not contacted me since that day.
11. As of the date of this affidavit, there is no monument on my father's grave.
12. As of the date of this affidavit, I have not received a refund from Kenneda.

EXHIBIT

1

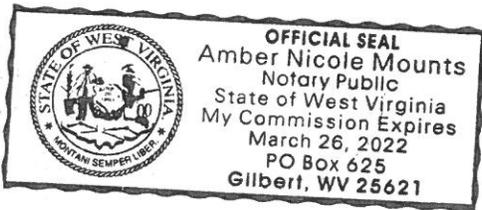
This is my complete statement.

Dated this 23 day of May, 2016.

Rose Hatfield
ROSE HATFIELD

Taken, subscribed and sworn to before me in the County and State aforesaid this 23 day of May, 2016.

My commission expires March 26, 2022.



Amber Nicole Mounts Clini
NOTARY PUBLIC

T&W Monuments
P.O. Box 331
Amherstdale, WI 53607
304-583-5125

Date 11 / 8 / 2014

No. 147179

received from Rose Hatfield

\$ 525.00

amount Five Hundred Twenty five dollars

for payment of Monument for

cash money order credit card check # _____

amount due	525	00
amount paid	525	00
balance	<u>0</u>	

from _____ to _____

signature Jonny Kennedy 885WS

Paid in full 11-8-2014

EXHIBIT
A

T&N Monuments
P.O. Box 331
Ankerstadel, WI 53607
304-583-5125

Date 11 / 8 / 2014 No. 147179
received from Rose Hatfield \$ 525.00
amount Five Hundred Twenty five dollars

for payment of Monument for
 cash money order credit card check # _____

amount due	525	00
amount paid	525	00
balance	<u>0</u>	

from _____ to _____
signature Tommy Kennedy 885W5

Paid in full 11-8-2014

- Die _____ X _____ X _____
- Base 2-6 X 1-0 X 0-6
- Marker _____ X _____ X _____
- Footstone 4 X 8 X DMD
- Misc _____ X _____ X _____

Family Name 1 side () or 2 () Carving 1 () or 2 ()

As you face the monument to read it, this is the LEFT side
As you face the monument to read it, this is the RIGHT side

Papers Attached

The said T & N Monuments Inc. agrees to haul all materials furnish foundation and erect the specified work in:

Cemetery Name: Kennedy Cemetery at: Long Beach

Monuments to be set at head of the grave () Foot of grave () to read toward the grave () or away ()

- Monument \$ 342.50
- Marker \$ 0
- Lettering \$ 75.00
- Design \$ 75.00
- Cemetery Fee \$ 0
- Setting Fee \$ 0
- Total Price \$ 492.50
- Sales Tax \$ 31.50
- Total \$ 525.00
- Deposit \$ 525.00
- Balance \$ 0

Tommy Kennedy
BY: TOMMY KENNEDY

It is further agreed that the above monument work and services shall be the property of the builder until paid in full and that said builder may remove monument upon default in any payment by the owner without legal process or liability for damages.

There is no agreement regarding this contract other than contained herein. This agreement is subject to delay caused by labor trouble or act of God. This contract is not subject to cancellation. Any money paid on this order is non-refundable.

AN ADDITIONAL CHARGE FOR FUTURE LETTERING WILL BE MADE AT THE TIME SUCH

LETTERING IS ORDERED, (INCLUDING DEATH DATES)

TERMS: BALANCE DUE ON COMPLETION UNLESS OTHERWISE SPECIFIED

Paid in full on 11-8-14

AFFIDAVIT

STATE OF WEST VIRGINIA,
COUNTY OF WYOMING, TO-WIT:

I, Charlotte Osborne, being over the age of eighteen (18) years, do hereby aver as follows:

1. I am a resident of Cyclone, Wyoming County, West Virginia.
2. On or about April 18, 2015, I met with Tommy Kenneda d/b/a T & N Monuments (T&N) at his home and place of business in Logan County, West Virginia to purchase monuments for my deceased husband's and my grave.
3. The total cost of the monuments, engraving and setting the monuments on the graves was \$2,400.00.
4. I paid a deposit of \$1,200.00 that day, with the remaining balance to be paid upon completion of the services. A true and accurate copy of the receipt is attached hereto as Exhibit A.
5. Kenneda promised me the monuments would be completed and set in place by late May, 2015.
6. The monuments were not set in place by the agreed upon date.
7. Over the following months, I attempted to contact Kenneda by phone to ask for a refund. He did not answer my phone calls or return my messages.
8. In July or August, 2015, I stopped by Kenneda's home. A woman answered the door and said he was not at home.
9. I was forced to buy another stone from a different company. Because I have another stone prepared, I only want Kenneda to refund my deposit.
10. Kenneda has not contacted me since April 18, 2015.
11. As of the date of this affidavit, I have not received a refund from Kenneda.

EXHIBIT
2

This is my complete statement.

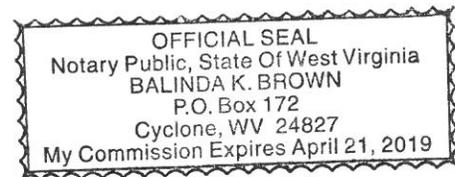
Dated this 23 day of May, 2016.

Charlotte Osborne
CHARLOTTE OSBORNE

Taken, subscribed and sworn to before me in the County and State aforesaid this 23 day of May, 2016.

My commission expires April 21, 2019.

Balinda Brown
NOTARY PUBLIC



304-583-5125

Tommy Kennedy
P.O. Box 331

Ambler, NJ 07630

RECEIPT		DATE <u>4/19/15</u>	No. <u>985064</u>
RECEIVED FROM <u>Charlotte Osburne</u>		\$ <u>1,200.00</u>	
<u>Two hundred 00/100</u>		DOLLARS	
FOR RENT <u>Movement for Mimis & Charlotte</u>			
<input type="radio"/> FOR RENT			
ACCOUNT <u>4400.00</u>	<input type="radio"/> CASH	FROM <u>Tommy Kennedy</u>	
PAYMENT <u>1700.00</u>	<input type="radio"/> CHECK		
BAL. DUE <u>1200.00</u>	<input type="radio"/> MONEY ORDER		
	<input type="radio"/> CREDIT CARD		

Thank you!

EXHIBIT
A

VERIFICATION

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO-WIT:

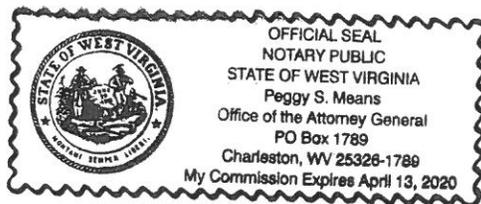
I, DOUGLAS L. DAVIS, ASSISTANT ATTORNEY GENERAL, being duly sworn, depose and say that I am the counsel of record for the Plaintiff in the Complaint and Petition for Preliminary and Permanent Injunction in the foregoing styled civil action; that I am familiar with the contents of the foregoing Complaint and Petition for Preliminary and Permanent Injunction; and that the facts and allegations contained therein are true, except such as are therein stated upon information and belief, and that as to such allegations I believe them to be true.



DOUGLAS L. DAVIS (WV State Bar # 5502)
ASSISTANT ATTORNEY GENERAL
Consumer Protection Division and
Antitrust Division

Taken, subscribed, and sworn to before me in the County and State aforesaid this 14th day of July, 2016.

My commission expires April 13, 2020.


NOTARY PUBLIC