

STATE OF CONNECTICUT

BEFORE THE COMMISSIONER OF CONSUMER PROTECTION

In the Matter of
JAMES DEAN JOYNER, LLC,
d/b/a/
THE FIREPLACE DOCTOR
a foreign limited liability company;
and individually,
JAMES DEAN JOYNER

Docket No. 2012-769

COMPLAINT

Pursuant to the provisions of the Connecticut Unfair Trade Practices Act, Section 42-110 et seq., as amended, of the Connecticut General Statutes, as amended, and the Uniform Administrative Procedure Act, Section 4-166 et seq., as amended, of the Connecticut General Statutes, and by virtue of the authority vested in him by said Acts, the Commissioner of Consumer Protection William M. Rubenstein having reason to believe that James Dean Joyner, LLC, doing business as The Fireplace Doctor, hereinafter referred to as Respondent FD, and James Dean Joyner, hereinafter referred to as Respondent Joyner, and collectively referred to as Respondents, have violated the provisions of the Unfair Trade Practices Act, hereby issues his Complaint stating his charges in that respect as follows:

PARAGRAPH ONE: Since on or before April 2012, Respondents have been engaged in the business of offering chimney and fireplace cleaning and repair, and have advertised and sold

Respondent FD's services and products to Connecticut consumers through websites, including www.fireplacedoctor.net, www.fireplacedoctorstore.com and www.groupon.com.

PARAGRAPH TWO: Respondent Joyner's personal residence is the same as Respondent FD's business address. Both are located at 5553 Mulat Road, Milton, Florida 32583.

PARAGRAPH THREE: Respondent Joyner incorporated Respondent FD in Florida on or about February 12, 2012, and the State of Florida administratively dissolved Respondent FD on September 28, 2010. On October 18, 2012, Respondent FD was reinstated as an active limited liability company.

PARAGRAPH FOUR: Despite Respondent FD's dissolution under Florida law at the time, on or about October 2, 2012, Respondent Joyner registered Respondent FD as a foreign limited liability company with the Connecticut Secretary of State, listing its start date of business in Connecticut as May 1, 2012. Respondent Joyner is the company's sole member and registered agent.

FIREPLACE DOCTOR – Groupon VOUCHERS

PARAGRAPH FIVE: On or about February 17, 2012, Respondent FD entered into a Merchant Agreement with the online voucher site, Groupon (www.groupon.com), to sell "chimney sweep, inspection and a moisture resistance evaluation" to Connecticut consumers. The Merchant Agreement was signed electronically by Respondent Joyner.

PARAGRAPH SIX: On or about April 8, 2012, Respondent FD started advertising and selling its chimney cleaning services for a "reduced price" to Connecticut consumers through the online voucher site, Groupon, at www.groupon.com.

PARAGRAPH SEVEN: Respondent FD has used Groupon to advertise and sell to Connecticut consumers on at least six separate occasions, including April 2012 in Fairfield County,

April 2012 in Hartford County, May 2012 in Fairfield County, May 2012 in Hartford County, July 2012 in Hartford County and September 2012 in Hartford County.

PARAGRAPH EIGHT: Respondent FD sold at least 1400 vouchers for chimney cleaning to Connecticut consumers in 2012 in conjunction with its offers through Groupon.

PARAGRAPH NINE: On multiple occasions in 2012, Respondent FD made offers to Connecticut consumers to undertake chimney repair work in addition to the chimney cleaning it performed in conjunction with a Groupon voucher purchased by the consumer.

PARAGRAPH TEN: In July 2012, subsequent to providing chimney cleaning services in conjunction with a Groupon voucher, Respondent FD made an offer in writing to a consumer in Stamford, Connecticut to undertake the deglaze roto-cleaning and waterproofing of two chimneys, for a price of \$989.00.

PARAGRAPH ELEVEN: In July 2012, subsequent to providing chimney cleaning services in conjunction with a Groupon voucher, Respondent FD made an offer in writing to a consumer in Glastonbury, Connecticut to undertake the waterproofing of the exterior of a chimney, for a price of \$229.00.

PARAGRAPH TWELVE: In September 2012, subsequent to providing chimney cleaning services in conjunction with a Groupon voucher, Respondent FD made an offer in writing to a consumer in Avon, Connecticut to undertake the crown-sealing and resurfacing of the top of a chimney and the installation of a chimney cap, for a price of \$589.00.

PARAGRAPH THIRTEEN: In September 2012, subsequent to providing chimney cleaning services in conjunction with a Groupon voucher, Respondent FD made an offer in writing to a consumer in Plantsville, a census-designated neighborhood in Southington, Connecticut to undertake the waterproofing of the exterior of a chimney, for the price of \$349.00.

HOME IMPROVEMENT

PARAGRAPH FOURTEEN: The chimney repair work listed in Paragraphs Nine through Twelve is deemed home improvement work, pursuant to Section 20-419(4), Connecticut General Statutes.

PARAGRAPH FIFTEEN: Due to Respondent FD's offers to undertake home improvement work, Respondent FD is considered a contractor, as defined by Section 20-419(3), Connecticut General Statutes.

PARAGRAPH SIXTEEN: As a contractor, Respondent FD is required by Section 20-420, Connecticut General Statutes, to be registered with the Connecticut Department of Consumer Protection prior to performing or offering to undertake any home improvement work.

PARAGRAPH SEVENTEEN: In July 2012, the Connecticut Department of Consumer Protection advised the Respondents that doing home improvement work in the state of Connecticut without proper registration is both a statutory violation and criminal offense under Section 20-427(b) and (c), Connecticut General Statutes.

PARAGRAPH EIGHTEEN: On or about August 13, 2012, Respondent Joyner submitted an incomplete Home Improvement Contractor application to the Connecticut Department of Consumer Protection on behalf of Respondent FD.

PARAGRAPH NINETEEN: On August 22, 2012, the Connecticut Department of Consumer Protection issued a notice to Respondent FD stating that its Home Improvement Contractor application was "PENDING – INCOMPLETE" because a search of the records of the Connecticut Secretary of State did not yield a record of Respondent FD.

PARAGRAPH TWENTY: On or about October 2, 2012, Respondent FD informed the Connecticut Department of Consumer Protection that it is now registered as a foreign limited liability company with the Connecticut Secretary of State.

PARAGRAPH TWENTY-ONE: On October 10, 2012, the Connecticut Department of Consumer Protection sent Respondent FD a Home Improvement Contractor application denial letter based on Sections 20-426(a)(1), 20-426(a)(4) and 20-426(a)(5), Connecticut General Statutes.

PARAGRAPH TWENTY-TWO: Despite not being registered as a home improvement contractor, Respondent FD has offered to perform home improvement work in Connecticut, in contravention of Section 20-427(b)(5), Connecticut General Statutes.

PARAGRAPH TWENTY-THREE: Respondent FD has also failed to make proper disclosures in its advertising for home improvement work to Connecticut consumers; at no time has Respondent FD stated in any of its advertisements for home improvement work in Connecticut that Respondent FD is registered with the State of Connecticut Department of Consumer Protection, as required by Section 20-427(a)(2), Connecticut General Statutes.

PARAGRAPH TWENTY-FOUR: Since starting to do business in Connecticut in 2012, at no time has Respondent FD included a registration number from the State of Connecticut Department of Consumer Protection in its advertisements for home improvement work in Connecticut, as required by Section 20-427(a)(3), Connecticut General Statutes.

PARAGRAPH TWENTY-FIVE: Upon information and belief, Respondent FD employs salespersons or agents in Connecticut who are not registered as home improvement salespersons with the Connecticut Department of Consumer Protection to solicit home improvement contracts, in violation of Section 20-420(b), Connecticut General Statutes.

**DECEPTIVE REPRESENTATIONS – ALLSTAR CHIMNEY ACADEMY &
PROFESSIONAL CHIMNEY GUILD OF AMERICA**

PARAGRAPH TWENTY-SIX: Chimney repair work is an important factor in preventing chimney fires and carbon monoxide poisoning in homes, thus it is important for homeowners to hire properly trained and registered chimney technicians. As such, reputable chimney repair companies often tout their professional memberships, training and/or certifications.

PARAGRAPH TWENTY-SEVEN: On or about November 30, 2009, Respondent Joyner was sent a cease and desist letter from the Chimney Safety Institute of America (CSIA) demanding that the Respondents refrain from using the CSIA trademarks, “Certified Chimney Sweep” and “Certified Chimney Sweep Chimney Safety Institute of America,” in their advertising.

PARAGRAPH TWENTY-EIGHT: The Respondents’ usage of CSIA’s trademarks was ultimately disputed in federal court, and a permanent injunction was issued against the Respondents in July 2012, barring them from using CSIA’s trademarks in any way, shape or form.

PARAGRAPH TWENTY-NINE: Subsequent to the start of the Respondents’ dispute with CSIA, Respondent Joyner created the fictitious groups, the Allstar Chimney Academy (ACA) and the Professional Chimney Guild of America (PCGA), to create the deceptive impression of certification and professionalization for his companies, including Respondent FD.

ALLSTAR CHIMNEY ACADEMY

PARAGRAPH THIRTY: Respondent FD’s websites and visual inspection sheets state that all of Respondent FD’s technicians are certified by the Allstar Chimney Academy (ACA). A true and exact copy of one such visual inspection sheet is attached hereto as Exhibit A.

PARAGRAPH THIRTY-ONE: In February 2011, Respondent Joyner created the ACA website, and as of the date of this complaint, is listed as the sole administrative and technical contact for the website.

PARAGRAPH THIRTY-TWO: Upon information and belief, the only companies whose technicians are certified by the ACA are those owned by Respondent Joyner, including Respondent FD.

PARAGRAPH THIRTY-THREE: The website of the ACA, www.allstarchimneyacademy.com, states that the ACA's objective is to "increase public safety by establishing meaningful credentials for professionals involved in planning and installing residential hearth appliance and venting systems," thus deceptively creating the impression that the ACA credentials are relevant to technicians working for companies other than those owned by Respondent Joyner.

PROFESSIONAL CHIMNEY GUILD

PARAGRAPH THIRTY-FOUR: Respondent FD's website, www.fireplacedoctor.net, and visual inspection sheets state that Respondent FD is a member of the PCGA. A true and exact copy of one such visual inspection sheet is attached hereto as Exhibit A.

PARAGRAPH THIRTY-FIVE: In February 2011, Respondent Joyner set up the PCGA website, www.pcgamerica.com, and as of the date of this complaint, is listed as the sole administrative and technical contact for the website.

PARAGRAPH THIRTY-SIX: On the homepage of the PCGA website, Respondent Joyner is listed as the President of PCGA. No other officers, employees, contacts or individual names are listed.

PARAGRAPH THIRTY-SEVEN: Also on the homepage of the PCGA website is a hyperlink for "Chimney Professionals" to "find out more information about the benefits of the PCGA, and resources available to you." However, the link is not properly coded to serve as a working hyperlink.

PARAGRAPH THIRTY-EIGHT: Through the mention of other members and a hyperlink for "Chimney Professionals," Respondent Joyner uses the PCGA website to deceptively create the impression that it has a wide array of members. However, the only companies with listings on the site are those owned by Respondent Joyner, specifically Respondent FD, and Respondent Joyner's other former company, Allstar Chimney Sweeps.

PARAGRAPH THIRTY-NINE: Respondent Joyner was also the sole member and registered agent of Allstar Chimney Sweeps, a Florida based limited liability company that was administratively dissolved on September 25, 2009.

PARAGRAPH FORTY: Upon information and belief, the PCGA is not a formally incorporated or organized business, professional association or guild.

UNFAIR METHODS OF COMPETITION

PARAGRAPH FORTY-ONE: Respondent FD engages in the sale of taxable services in the State of Connecticut, as defined by Section 12-407(a)(2)(I), Connecticut General Statutes, including, but not limited to, chimney cleaning of owner-occupied residential properties.

PARAGRAPH FORTY-TWO: As of the date of this complaint, Respondent FD does not possess a Sales and Use Tax Permit from the Connecticut Department of Revenue Services, as required for any business engaged in the sale of a taxable services in the State of Connecticut, pursuant to Section 12-409(a), Connecticut General Statutes.

PARAGRAPH FORTY-THREE: Upon information and belief, at all times relevant herein, Respondent FD has not charged Connecticut sales tax for its chimney cleaning services.

PARAGRAPH FORTY-FOUR: By not charging Connecticut sales tax for its chimney cleaning services, Respondent FD is able to charge lower prices than its competitors for chimney cleaning, and thereby, at all times relevant herein, has engaged in an unfair method of competition, in violation of Section 42-110b, Connecticut General Statutes.

TRADE NAME CERTIFICATES

PARAGRAPH FORTY-FIVE: In July 2012, Respondent FD conducted business in Stamford, Connecticut under an assumed name without filing a fictitious business name certificate with the Stamford town clerk, as required by Section 35-1, Connecticut General Statutes.

PARAGRAPH FORTY-SIX: In July 2012, Respondent FD conducted business in Glastonbury, Connecticut under an assumed name without filing a fictitious business name certificate with the Glastonbury town clerk, as required by Section 35-1, Connecticut General Statutes.

PARAGRAPH FORTY-SEVEN: In September 2012, Respondent FD conducted business in Avon, Connecticut under an assumed name without filing a fictitious business name certificate with the Avon town clerk, as required by Section 35-1, Connecticut General Statutes.

PARAGRAPH FORTY-EIGHT: In September 2012, Respondent FD conducted business in Plantsville, a census-designated neighborhood in Southington, Connecticut under an assumed name without filing a fictitious business name certificate with the Southington town clerk, as required by Section 35-1, Connecticut General Statutes.

PIERCING THE CORPORATE VEIL

PARAGRAPH FORTY-NINE: At all times relevant herein, Respondent Joyner exerted complete control over the business practices alleged in Paragraphs One through Forty-Four.

PARAGRAPH FIFTY: Respondent Joyner and Respondent FD are one and the same; they share the same physical address and Respondent Joyner is Respondent FD's sole member and registered agent.

PARAGRAPH FIFTY-ONE: As the sole member of Respondent FD, Respondent Joyner has not abided by the formalities required of a Florida limited liability company in that he did not file an annual report for Respondent FD, and thus Respondent FD was administratively dissolved in September 2012.

PARAGRAPH FIFTY-TWO: Respondents have continued to operate in Connecticut after Respondent FD's administrative dissolution in September 2012.

PARAGRAPH FIFTY-THREE: The acts or practice alleged in Paragraphs Thirty-Seven through Forty-Three demonstrate a unity of interest between the Respondents, such that Respondent FD does not function independently, and thus Respondent Joyner should be held individually liable for Respondent FD's actions.

CONNECTICUT UNFAIR TRADE PRACTICES ACT

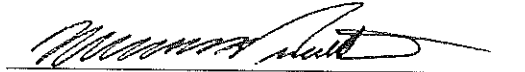
PARAGRAPH FIFTY-FOUR: The acts or practices of the Respondents alleged in Paragraphs One through Forty-Eight and Fifty-Two constitute unfair or deceptive acts or practices in violation of Connecticut General Statutes, Section 42-110b.

WHEREFORE, THE PREMISES CONSIDERED, the Commissioner of Consumer Protection on this 13 day of NOVEMBER, 2012 issues his Complaint against said Respondent.

NOTICE

Notice is hereby given to you, James Dean Joyner, LLC, d/b/a The Fireplace Doctor, and James Dean Joyner, in accordance with Connecticut General Statutes, Section 42-110b, as amended, the 7th day of December, 2012 at 10:00 a.m., is hereby fixed as the time when, and Room 126, State Office Building, 165 Capitol Avenue, Hartford, Connecticut, as the place where a hearing will be held before the Commissioner of Consumer Protection or a Hearing Officer designated by him on the charges set forth in the Complaint at which time and place you will have the right to appear and show cause why an Order should not be entered requiring you to cease and desist from the violations of law charged in the Complaint and also why an Order directing restitution should not be entered against you.

You are hereby notified that you have the right to file a written answer to the Complaint and charges therein stated and appear at the time and place so fixed for such a hearing IN PERSON, or otherwise, with or without counsel, and submit testimony and be fully heard.



WILLIAM M. RUBENSTEIN
Commissioner of Consumer Protection

EXHIBIT A

The Fireplace Doctor
 A Division of Advanced Creative Solutions
 Corporate Office Address:
 5553 Mulat Road
 Milton, FL 32583
1-888-565-0124

WWW.FIREPLACEDOCTOR.NET
 OR VISIT OUR ONLINE STORE
WWW.FIREPLACEDOCTORSTORE.COM



COMMENTS:

Customer: [Redacted]
 Address: [Redacted]
 City: _____ State: _____ Zip: 00001
 Phone: [Redacted]
 E-Mail: _____

Date: 9/1/12 Time: _____

Type of Fireplace Pro-Fab Masonry Modular
 Number of Stones 1, 2, 3, 4 No. of Fireplaces 1, 2, 3, 4
 Woodstove Insert Freestanding Pellet
 Type of Wood Used: Soft Hard Wet Dry
 Last Cleaned _____ Year(s) ago Never
 Flue Size 8"x8" 8"x13" 13"x13"
 15" x 11" 5" Round 8" Round 17"
 Fireplace Opening Size _____ X _____

Swept fireplace flue clean & clear. The crown at the top of this chimney is in poor shape and this chimney is also missing caps.

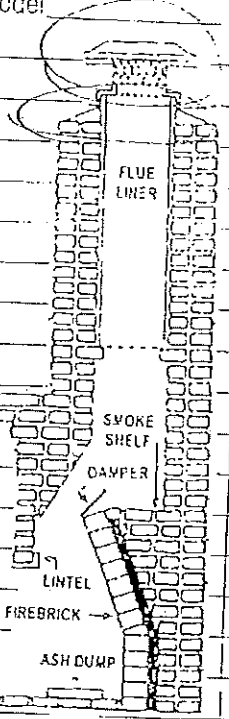
We would recommend chimney & resurfacing the top of this chimney and install a 13x13 8x13 caps to protect each venting system.

* FULL JOB TO \$589.00

CONDITION REPORT

Mfr. _____ Model _____

| | Satisfactory | Unsatisfactory | Not Applicable |
|-------------------------------|-------------------------------------|-------------------------------------|----------------|
| CHIMNEY | | | |
| 1. Height | <input checked="" type="checkbox"/> | | |
| 2. Chimney Cap/Spark Arrestor | | <input checked="" type="checkbox"/> | |
| 3. Crown/Wash | | <input checked="" type="checkbox"/> | |
| 4. Brickwork/Mortar | | <input checked="" type="checkbox"/> | |
| 5. Flashing | | <input checked="" type="checkbox"/> | |
| 6. Flue Liner | | <input checked="" type="checkbox"/> | |
| 7. Moisture Resistance | | <input checked="" type="checkbox"/> | |
| FIREPLACE | | | |
| 8. Smoke Chamber | | <input checked="" type="checkbox"/> | |
| 9. Damper | | <input checked="" type="checkbox"/> | |
| 10. Firebox/Grate | | <input checked="" type="checkbox"/> | |
| 11. Ash Container | | <input checked="" type="checkbox"/> | |
| 12. Spark Screen/Doors | | <input checked="" type="checkbox"/> | |
| 13. Tools & Gloves | | <input checked="" type="checkbox"/> | |
| 14. Refractories | | <input checked="" type="checkbox"/> | |
| 15. Profile | | <input checked="" type="checkbox"/> | |
| 16. Attic Clearances | | <input checked="" type="checkbox"/> | |
| 17. Attic Insulation | | <input checked="" type="checkbox"/> | |
| 18. Dryer Vent | | <input checked="" type="checkbox"/> | |
| 19. | | | |



RECEIPT / INVOICE # PACKAGE DEAL

| DESCRIPTION | PRICE |
|--------------|----------|
| CHIMNEY SEAL | \$589.00 |
| 13x13 CAP | 139.00 |
| 8x13 CAP | 119.00 |
| SUBTOTAL | |
| TOTAL | |

NEXT SERVICING SCHEDULED:

CHIMNEY PROFESSIONAL SIGNATURE: _____

CUSTOMER VERIFICATIONS:

I have read this form and now understand which areas of my chimney system appear to be satisfactory and which areas are not satisfactory. I also understand that The National Fire Protection Association states that the fireplace and chimney shall be inspected YEARLY for any structural faults.

SIGNED: [Redacted] DATE: 9.1.12

Note: This sheet is a result of a visual inspection done at the time of cleaning. It is