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JAMS ARBITRATION

DAVID TAYLOR, **Claimant,** **v.** **TECHNOLOGY CREDIT UNION,** **Respondent.**	**JAMS REFERENCE NO. 5440000980**

INTERIM AWARD

This case comes before the Arbitrator for a final determination on the Claimant's request for rescission of the contracts he entered into regarding the solar energy system he purchased for his residence from Power Home Solar, LLC ("Pink Energy") and for which he obtained financing in the amount of $61,656.00 from Respondent Technology Credit Union. Claimant further seeks a refund of all monies he paid to date and other related relief. A virtual Final Hearing took place on July 30 and 31, 2024. Both parties and their counsel were present and participated. Claimant and his wife, Allie Taylor, testified, along with Claimant's expert, Kyle Bolger. Respondent's witnesses included its expert, Darryl Ebersole, and Josefina Lopez, Respondent's Asst. VP, Strategic Lending Partners. In addition to the stated testimony, numerous exhibits were introduced into evidence. Both sides submitted Post-Hearing Briefs and evidence closed on October 4, 2024.

Claimant raises the following claims[1] against Respondent derivatively under the Federal Trade Commission Holder Rule, 16 C.F.R. Section 433.2: [2]1) fraud, 2) breach of contract, 3) breach of warranty, and 4) violation of the North Carolina Unfair and Deceptive Trade Practices

[1] Pursuant to the Arbitrator's Choice of Law Ruling, California law applies to the contract and warranty claims, and North Carolina law applies to the fraud and North Carolina Unfair and Deceptive Trade Practices Act.
[2] Respondent does not dispute a claim for derivative liability may be asserted pursuant to the Holder Rule.

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Act ("NCUDTPA"). He also asserts a claim against Respondent directly for fraud and violation of the NCUDTPA. Having considered each of Claimant's theories of recovery, the Arbitrator finds that Claimant has established his right to derivative relief against Respondent for fraud and a violation of NCUDTPA. Accordingly, the Arbitrator elects not to consider Claimant's alternative theories of breach of contract and warranty.

Upon consideration of the record, the Arbitrator finds as follows:

1. Claimant and his wife became interested in installing a solar energy system at their residence in Mooresville, North Carolina as a means to reduce the cost of their monthly electricity bill.
2. After conducting their own research online, they scheduled a sales appointment to meet with a representative of Pink Energy. Claimant and his wife met with Mr. Jonathan Bruney, a Pink Energy salesperson, in their home on October 9, 2020. During the lengthy sales pitch, Mr. Bruney verbally represented[3] to the Taylors that on an annual basis they should expect a decrease in their electric bill due to the solar energy generated by the solar panel system they were purchasing which would offset their monthly payments for the system. More specifically, Mr. Bruney convinced the couple, assuming their overall energy consumption did not increase, that their average monthly expense (inclusive of the electric bill and new loan payment) should not be any higher than it was prior to the installation of the system.
3. Based on Mr. Bruney's representation that the installation of the system should reduce their annual electrical utility costs, Claimant advised Mr. Bruney that he wanted to proceed with the purchase and installation. He provided some financial information to

[3] Neither party proffered Mr. Bruney as a witness. The Taylors' account of what Mr. Bruney told them is unrebutted.

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Mr. Bruney which the latter entered into a digital financing application submitted to Sunlight Financial. Claimant received financial approval from Sunlight Financial through its lending partner, Respondent.

4. That same day, Mr. Bruney provided Claimant with two contracts for digital review and signature using DocuSign. With his own digital device, Claimant proceeded to review and sign a home improvement contract with Pink Energy and a sales financing contract with Respondent.

5. During his meeting with the Taylors, Mr. Bruney spoke exclusively in terms of Claimant's future monetary savings rather than in terms of the solar system's energy production or the Taylors' historical energy consumption. This is key because the solar system Mr. Bruney sold them was not capable of producing more than a fraction of the energy they needed to sustain their household.[4]

6. Respondent rigorously cross-examined Claimant about the energy production projections appearing in the Pink Energy contract which if carefully read and understood would cast doubt on the veracity of Mr. Bruney's repeated representations about cost savings and highlight the production limitations of the solar system. However, there was no evidence to counter Claimant's testimony that Mr. Bruney neither discussed nor referenced any of that data despite the considerable time he spent with Claimant and his wife. It is precisely Mr. Bruney's sales tactic to verbalize the improbable, if not impossible, and leave Claimant to "fact check" his misrepresentations against disclaimers and unexplained production projections buried

[4] The Pink Energy contract estimated that the system would produce 7,533 kWh of electricity in a best-case scenario and the Taylors' historical data showed an annual consumption of 29,315 kWh. For that simple reason, Mr. Bruney's representation about cost savings was grossly misleading.

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in the contracts to ultimately discover the reality that solar system being sold to him was incapable of performing as represented that makes his statements fraudulent, misleading and deceptive.

7. At no point after Pink Energy installed the solar system did Claimant experience any notable offset from the solar energy generated by the system at a level to reduce his annual electric bill. Instead, on top of his monthly electric bills, Claimant incurred $61,656.00 in consumer debt financed over thirty (30) years.[5]

8. To make matters even worse, notwithstanding the opposing experts' differing opinions about the quality of the overall installation and the performance of the solar system, both experts agreed that the Generac Snap RS801s constituted a key component of the system, were defective and in need of replacement. Moreover, there was ample evidence presented to establish that beginning within the first month of Pink Energy's installation when the Taylors experienced a related roof leak and internal damage and continuing over the past four years, the Taylors experienced recurring problems with operation of the system and the system has produced less than half of the solar energy represented in the Pink Energy contract.

9. Claimant's expert testified that it would cost approximately $4000.00 to remove the solar system from Claimant's roof.

Based on the foregoing findings of fact, the Arbitrator makes the following conclusions of law:

[5] Due to Claimant's wife contacting Respondent a few times regarding the problems they were experiencing with the system's performance and the delay in replacement of the Generac Snap RS 801s, Respondent deferred the monthly payments from December 2022 to March 2024.

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1. To prevail on his claim for fraud brought under North Carolina law, Claimant must establish Mr. Bruney made 1) a false representation or concealment of a material fact, 2) reasonably calculated to deceive, 3) with the intent to deceive, 4) which does in fact deceive, 5) resulting in damage to him.[6]

2. Based on the foregoing factual findings, the Arbitrator concludes that Claimant has carried his burden in establishing Pink Energy's sales representative fraudulently induced Claimant to purchase the solar system. Mr. Bruney's representations as described above concealed the material facts regarding the production capacity of the solar system, and the reality that even if when operating as designed, there was an impossibility of an offset sufficient to reduce the Taylors' annual electric bill in an amount to offset the additional financial burden of the loan payments. As a consumer without the technical knowledge that Mr. Bruney possessed to distill the production versus consumption metrics, Claimant reasonably relied on Mr. Bruney's material misrepresentations. There can be no other conclusion, but that Mr. Bruney intended to deceive the Taylors by proceeding to sell them the system after they expressed their primary objective in purchasing the system was cost savings on their electric bill. Claimant and his wife were clearly deceived as evidenced by their repeated calls for assistance with monitoring the system's output and complaints about there being no noticeable change in their electric bills. Finally, Claimant's damage is two-fold: a defective, arguably unsafe, solar system mounted atop his home and the financial burden of a long-term loan agreement.

[6] *Ragsdale v. Kennedy, 209 S. E. 2d 494, 500 (N. C. 1974).*

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3. Respondent asserts the contracts' merger clause in defense of Claimant's theory of fraud. Under North Carolina law, Claimant's parol evidence can be considered despite the merger clause to establish his claim of fraud in the inducement of the contract. *Godfrey v. Res-Care, Inc.,* 598 S. E. 2d 396, 403 (N.C. App. 2004).
4. The Arbitrator further concludes that the above-described representations made by Mr. Bruney and relied on by Claimant were deceptive and constituted a violation under the North Carolina Unfair Deceptive Trade Practices Act.
5. However, although the Arbitrator holds Respondent derivatively liable under the Holder Rule, the Arbitrator does not find persuasive Claimant's assertion of direct liability based on a theory of agency. Claimant failed to establish that Respondent exercised any control over Pink Energy's conduct or its employees. Respondent's involvement was only to provide financing for Pink Energy's customers in an arrangement akin to when a network of outside lenders arranges financing for customers of a car dealer. Courts analyzing this type of relationship have refused to conclude that an agency relationship exists. *See Mardis v. Ford Motor Credit Co.,* 642 So. 2d 701, 704 (Ala. 1994).
6. The appropriate remedy for the fraud committed by Pink Energy is rescission of both contracts and the refund of all payments made by Claimant to date.
7. The NCUDTPA violation entitles Claimant to his actual damages, treble damages and attorney's fees and costs.

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CONCLUSION

Based on the foregoing, the Arbitrator rules as follows:

A) The home improvement contract between Claimant and Pink Energy is rescinded, and Claimant shall have no further obligation thereunder.

B) The loan agreement between Claimant and Respondent is rescinded, and Claimant shall have no further obligation to make payments.

C) Respondent shall refund Claimant $8,223.84, representing all monies paid on his account to date within fourteen (14) days of the entry of the Final Award.

D) Additionally, having prevailed on his NCUDTPA claim, Claimant is awarded treble damages in the amount of $24,671.52.

E) Respondent shall pay Claimant $2000.00 to remove the solar energy system from his roof. Said payment shall be paid to Claimant's counsel within fourteen (14) days of the entry of the Final Award. Immediately upon receipt of payment, Claimant shall make arrangements for the removal of the system and retrieval by Respondent, if done so within thirty (30) days after Claimant's counsel notifies Respondent's counsel that the system has been removed.

F) Respondent shall remove any UCC liens or other liens associated with, and credit reporting related to the loan agreement within thirty (30) days of the Final Award.

G) Claimant's counsel shall submit an Attorney Declaration regarding Claimant's request for a Final Award which includes attorney's fees and costs. The Declaration shall delineate the services rendered to assist the Arbitrator in determining what constitutes reasonable fees and costs. Claimant shall submit his Attorney Declaration within

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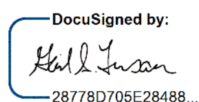
fourteen (14) days of the entry of this Interim Award, and Respondent may file a reply no later than fourteen (14) days after Claimant's submission on fees.

Dated October 28, 2024.



Gail S. Tusan (Senior Judge)

Arbitrator

SERVICE LIST

Case Name: Taylor, David vs. Technology Credit Union
Reference #: 5440000980
Panelist: Tusan, Gail S.,
Hear Type: Arbitration
Case Type: Business/Commercial

Jonathan Cohen

Joseph, Cohen & Del Vecchio, P.C.

Jonathan Cohen
100 Smith Ranch Rd
Suite 116
San Rafael, CA 94903
jcohen@jcd.law

Respondent
Phone: 415-817-9200
Fax: 415-223-3468

Party Represented:
Technology Credit Union

Jarrett Faber

Kneupper & Covey PC

Jarrett Faber
11720 Amber Park Dr.
Suite 160, PMB 1271
Alpharetta, GA 30009
jarrett@kneuppercovey.com

Claimant
Phone: 404-999-3239

Party Represented:
David Taylor

James Faucher

Brown, Faucher, Peraldo, & Benson PLLC

James Faucher
822 N Elm St
Suite 200
Greensboro, NC 27401
james@greensborolawcenter.com

Claimant
Phone: 336-478-6000

Party Represented:
David Taylor

Maximilian C. Jelen

Gordon Rees Scully Mansukhani LLP

Maximilian C. Jelen
One North Wacker Dr.
Suite 1600
Chicago, IL 60606
mjelen@grsm.com

Respondent
Phone: 312-565-1400
Fax: 312-565-6511

Party Represented:
Technology Credit Union

Samuel G. Thompson

Gordon Rees Scully Mansukhani LLP

Samuel G. Thompson
150 Fayetteville St.
Suite 1120
Raleigh, NC 27601
bothompson@grsm.com

Respondent
Phone: 919-787-4555
Fax: 919-741-5840

Party Represented:
Technology Credit Union