

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION
*Electronically Filed***

DONALD DUVALL, individually and
on behalf of similarly situated persons

Plaintiffs,

v.

GRACELAND PROPERTIES, LLC

Defendant.

Case No. 5:19-cv-196-TBR

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Donald Duvall (“Plaintiff” or “Mr. Duvall”), individually and on behalf of all other similarly situated Graceland Portable Buildings dealers, brings this Complaint against Defendant Graceland Properties, LLC (“Defendant”), and alleges as follows:

1. Defendant contracts with dealers nationwide to sell Graceland Portable Buildings. The dealers rent lots where they display buildings and make their sales, and each dealer is responsible for running his respective lot. Defendant has written agreements to pay full-time dealers commissions on the total cost of the portable buildings before taxes. However, in violation of these agreements, and upon information and belief, Defendant instead calculated commission sales by the number of customer payments made, and also withdrew one or more commission payments from the dealers’ accounts at random.

2. Plaintiff brings this lawsuit as a class action under Kentucky common law for breach of contract to recover unpaid sales commissions owed to himself and similarly situated Graceland Portable Buildings dealers employed by Defendant.

PARTIES

3. Plaintiff Donald Duvall is a resident of Pope County, Arkansas. From June 2, 2016 through November 3, 2017, Mr. Duvall operated as a full-time dealer of Graceland Portable Buildings in Russellville, Arkansas, pursuant to an independent contractor agreement entered into with the Defendant (“Agreement”). In the event of any legal disputes that should arise, Mr. Duvall consented to the exclusive jurisdiction of this federal district court in his Agreement with Defendant.

4. Defendant Graceland Properties, LLC (“Graceland Properties”) is a Kentucky for-profit corporation. Graceland Properties may be served via its registered agent CT Corporation System at 306 W. Main Street, Suite 512, Frankfort, KY 40601.

JURISDICTION AND VENUE

5. Jurisdiction is proper in this district pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of \$75,000 and is between citizens of different States.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Defendant is subject to personal jurisdiction here and because the choice of law provision in the Agreement specifies that disputes will be litigated in this Court.

FACTUAL ALLEGATIONS

7. For the nearly 17 month-period between June, 2016, and November, 2017, Mr. Duvall made his living as an independent contractor selling Graceland Portable Buildings manufactured by the Defendant.

8. Defendant bills itself as “providing comprehensive Rent-To-Own services and cash sales . . . from small business enterprises needing an office, or extra storage in the

back yard of one's home, to getaway cabins on the lake." These products are collectively, "Graceland Portable Buildings."

9. Mr. Duvall and other dealers contracted with Defendant to sell Graceland Portable Buildings using a commission-based payment system.

10. Mr. Duvall contracted to become a dealer with Defendant in June of 2016. Mr. Duvall and Graceland Properties' Dealer Agreement is attached hereto as **Exhibit A**.

11. Mr. Duvall agreed to lease a sales lot for inventory, keep up a business office, and personally maintain general liability, auto liability, and crime insurance. The Landlord Waiver and Dealer Activation Forms are attached hereto as **Exhibit B**.

12. Mr. Duvall also entered into a Covenant Not to Compete with Defendant where he consented to litigate disputes in the state courts of Ballard County, Kentucky or in the Western District of Kentucky. The Covenant Not to Compete is attached hereto as **Exhibit C**.

13. Graceland Properties promised to fully compensate Mr. Duvall for his sales.

14. "Exhibit A" to the Dealer Agreement states Mr. Duvall's commission agreement (emphasis added):

All Graceland Portable Buildings full time dealers are paid 10% commissions of total cost of buildings before taxes. In the event that the dealership is closed the final commission check will not be paid until 30 days after closing to allow time for all sales to be finalized and all funds from sales to be verified.

15. Defendant did not follow the terms of the commission agreement.

16. Defendant did not pay Mr. Duvall what he was owed on sales of Graceland Portable Buildings under the following scenarios: (1) when a buyer did not make two

consecutive payments on a building, the dealer would not receive commission; and (2) when Defendant would refund itself commissions from Mr. Duvall's paycheck at random.

17. Upon information and belief, the total deductions from Mr. Duvall's account totaled over \$13,000.

18. Other full-time dealers had similar experiences to Mr. Duvall's. They were subject to Dealer Agreements, had commission policies, completed similar sales at comparable prices and volumes, and were paid commissions on some of their sales but faced forced deductions at random on others.

CLASS ACTION ALLEGATIONS

19. Mr. Duvall brings Count I and Count II as a class action pursuant to Kentucky Rules of Civil Procedure 23 on behalf of himself and as the Class Representative of the following persons ("the Class"):

All individuals who, since January 1, 2014, have: (1) signed a Graceland Properties' Dealer Agreement; (2) sold a Graceland Portable Building as a full-time Graceland Portable Building dealer; and (3) had any portion of their commission payment on such sale withheld or rescinded by Graceland Portable Buildings.

20. These claims are brought on behalf of all similarly-situated persons who do not opt-out of the Class.

21. Plaintiff and all of Defendant's dealers are similarly situated in that:
- a. They are full-time dealers of Graceland Portable Buildings;
 - b. They contracted with Defendant to sell Graceland Portable Buildings on commission;
 - c. They signed or agreed to Dealer Agreements outlining the terms and conditions of their employment;

d. They were subject to Defendant refunding itself a commission from their paychecks; and

e. They were subject to refusal of Defendant to pay commission on buildings sold where the buyer did not make two consecutive payments.

22. The Class satisfies the numerosity standard because, upon information and belief, it consists of at least 40 persons geographically dispersed and, therefore, joinder of all Class members in a single action is impracticable.

23. Questions of law and fact common to the Class predominate over any questions affective only individual members. The questions of law and fact common to the Class arising from Defendant's actions include:

a. Whether a contractual relationship existed between the dealer and Defendant;

b. Whether the contract included a commission agreement; and

c. Whether Defendant breached the Dealer Agreement when it paid dealers less than the agreed-upon commission rate.

24. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity to other available methods for the fair and efficient adjudication of the state law claims.

25. Plaintiff's claim is typical of those of the Class in that:

a. Plaintiff and the Class are or were full-time dealers of Graceland Portable Buildings within the past five years;

b. Plaintiff and the Class have common agreements with the Defendant; and

c. Plaintiff and the Class were not paid commissions in accordance with the plain language in the commission agreements.

26. A class action is the appropriate method for the fair and efficient adjudication of this controversy. Defendant has acted or refused to act on grounds generally applicable to the Class.

27. Plaintiff is an adequate representative of the Class because he is a member of the Class and his interests do not conflict with the interest of the members of the Class he seeks to represent. The interests of the members of the Class will be fairly and adequately protected by Plaintiff and the undersigned counsel, who have extensive experience prosecuting employment and class action litigation.

28. Maintenance of this action as a class action is superior to other available methods for fairly and efficiently adjudicating the controversy as members of the Class have little interest in individually controlling the prosecution of separate class actions, no other litigation is pending over the same controversy, and there are no material difficulties impairing the management of a class action.

29. It would be impracticable and undesirable for each member of the Class who suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all Class members.

COUNT I: BREACH OF CONTRACT

30. Mr. Duvall incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

31. Mr. Duvall and Defendant entered into a contract under which Mr. Duvall would sell buildings and Defendant would pay Mr. Duvall a commission calculated as a percentage of the total cost of the sale.

32. Nothing in the parties' contract allowed Defendant to deviate from how it paid commissions to Mr. Duvall.

33. Defendant breached its contractual obligation by failing to pay commission if a buyer did not make two consecutive payments on a sale and by refunding itself commissions from Mr. Duvall's paycheck at random.

34. Upon information and belief, as a result of Defendant's breach of his obligation, Mr. Duvall has suffered damages of not less than \$13,000.

COUNT II: UNJUST ENRICHMENT/QUANTUM MERUIT

35. Mr. Duvall incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

36. Mr. Duvall conferred a benefit upon Defendant by working on its behalf for compensation.

37. Defendant had an appreciation or knowledge of the benefit conferred by Mr. Duvall.

38. Defendant accepted and retained the benefit under such circumstances as to make it inequitable for Defendant to retain the benefit without payment of its value.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff and the Class request that this Court grant the following relief:

- A. Enter judgment against Defendant and award Mr. Duvall and the Class damages compensating their unpaid commissions;
- B. Award the cost and expenses of litigation, including but not limited to attorneys' fees;
- C. Award pre-judgment and post-judgment interest as provided by law; and
- D. Any such further legal or equitable relief as the Court may deem appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a trial by jury of all issues triable by jury.

Respectfully submitted,

/s/ Devon N.R. Oser

Devon N.R. Oser (KBA #95218)
Joe P. Leniski, Jr. (TN BPR #22891) (*pro hac vice
forthcoming*)
Branstetter, Stranch & Jennings, PLLC
515 Park Avenue
Louisville, KY 40208
Tel: (502) 636-4333
Email: joeyl@bsjfirm.com
devono@bsjfirm.com

K. Bryan Ernstberger (KBA #90798)
Easley, Ernstberger, Perlow & Naber, PLLC
204 South 6th Street
Murray, Kentucky 42071
Tel: (270) 753-2633
Email: murrayattorney@gmail.com

James A. Streett (AR BPR #2007092) (*pro hac vice
forthcoming*)
Streett Law Firm, P.A.
107 W. Main Street
Russellville, Arkansas 72801
Tel: (479) 968-2030
Email: james@streettlaw.com

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Graceland Properties Breached Dealer Contracts by Miscalculating Commissions](#)
