

01-546-CD
COMMONWEALTH OF PENNSYLVANIA -vs- MARY MANN et al

1
2 **IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY**
3

4 COMMONWEALTH OF PENNSYLVANIA
5 ACTING BY ATTORNEY GENERAL
6 D. MICHAEL FISHER

CIVIL ACTION - EQUITY

6 **PETITIONER**

NO. 2001 - 546-49

7 v.

8 MARY MANN, individually,
9 and MARY MANN, d/b/a
10 MANN'S ST. BERNARDS
11 RR #1, BOX 3
12 WOODLAND, PA 16881

ASSURANCE OF VOLUNTARY
COMPLIANCE

11 **RESPONDENT**

23 **COUNSEL FOR PETITIONER**

24 MARGIE A. ANDERSON
25 DEPUTY ATTORNEY GENERAL
26 ATTORNEY I.D. NO. 79513
27 BUREAU OF CONSUMER PROTECTION
28 EBENSBURG REGIONAL OFFICE
171 LOVELL AVENUE, SUITE 202
EBENSBURG, PA 15931
(814) 949-7900

FILED

APR 17 2001

William A. Shaw
Prothonotary

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11 RESPONDENT

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13 **ASSURANCE OF VOLUNTARY COMPLIANCE**

14 **WHEREAS**, the Commonwealth of Pennsylvania, acting by Attorney General D.
15 Michael Fisher, through the Bureau of Consumer Protection (hereinafter "Commonwealth"),
16 has caused an investigation to be made into the business practices of Mary Mann,
17 individually, and d/b/a Mann's St. Bernards (hereinafter "Respondent");

18 **WHEREAS**, the Respondent engages in trade and commerce within the
19 Commonwealth through the offer for sale and sale of puppies to the public from a principal
20 place of business at RR #1, Box 3, Woodland, Pennsylvania 16881;

21 **WHEREAS**, based upon its investigation, the Commonwealth believes that the
22 Respondent has engaged in conduct violative of the Unfair Trade Practices and Consumer
23 Protection Law, Act of December 17, 1968, P.L. 1224, No. 387, as amended and reenacted
24 by the Act of November 24, 1976, P.L. 1166, No. 260, and the Act of December 3, 1996,
25 P.L. 906, No. 146, 73 P.S. §201-1 et seq. (hereinafter referred to as the "Consumer
26 Protection Law") as more fully set forth below:

27 1. On August 24, 1997, the Puppy Lemon Law went into effect, which amended
28 the Consumer Protection Law, providing that sellers of puppies must provide purchasers

1 with specific notices and extend specific warranty rights to purchasers of puppies within the
2 Commonwealth. 73 P.S. §201-9.3.

3 2. According to §201-9.3(i) of the Consumer Protection Law, "Seller" of puppies
4 means "a kennel, pet shop operator or other individual who sells dogs to the public and who
5 owns or operates a kennel or pet shop licensed by the Pennsylvania Department of
6 Agriculture or the United States Department of Agriculture."

7 3. The Dog Law provides that a kennel license is required to "keep or operate
8 any establishment that keeps, harbors, boards, shelters, sells, gives away or in any way
9 transfers a cumulative total of 26 or more dogs of any age in any one calendar year." 3
10 P.S. §459-206(a).

11 4. Respondent has failed to acquire a license as required by §459-206(a) of the
12 Dog Law.

13 5. §201-9.3(g)(1) of the Consumer Protection Law requires that a summary of
14 the provisions of §201-9.3 be conspicuously posted in the place of business by sellers
15 subject to this section. Respondent has failed to post this summary in her business in
16 violation of the Consumer Protection Law.

17 6. Respondent provided purchasers with a sales agreement at the time of sale
18 setting forth information about the puppy. A copy of the Respondent's sales agreement is
19 attached hereto and incorporated herein as Exhibit "A".

20 7. Respondent failed to provide purchasers with a health record at the time of
21 sale that included all the information outlined in §201-9.3(a)(1)(i) through (vii) of the
22 Consumer Protection Law. Specifically, Respondent failed to disclose to purchasers the
23 following information: the name of the person who administered vaccinations, any
24 information regarding parasitical medicine and a statement affirming all of the information
25 provided in the health record is true to the best of the Respondent's knowledge and belief.

26 8. The Consumer Protection Law requires that purchasers be provided with
27 either a guarantee of good health or a health certificate issued by a veterinarian.
28 Respondent's sales agreement includes language that guarantees the health of the puppy

1 for a limited number of days but the guarantee fails to include the required language and
2 therefore does not comply with §201-9.3(a)(2)(ii) of the Consumer Protection Law.

3 9. The warranty information included on Respondent's sales agreement fails
4 to comply with and contradicts the terms of §201-9.3(b) of the Consumer Protection Law
5 in the following ways:

- 6 a. The Respondent's sales agreement states that the health of the puppy
7 is guaranteed for fourteen (14) days, which does not take into
8 consideration that a purchaser has thirty days for congenital or
9 hereditary problems, §201-9.3(b), and
- 10 b. The Respondent's sales agreement states in case of sickness or
11 injuries caused by breeder that the purchaser is entitled to exchange
12 the puppy if one is available within twelve (12) months. This does not
13 afford the purchaser the right to choose the option allowing them to
14 retain the dog and be entitled to reimbursement for reasonable
15 veterinary fees as outlined in §201-9.3(b)(3) .

16 10. The time frame in which any refund or reimbursement shall be made as
17 outlined in paragraph 9 above does not comply with §§201-9.3(b)(2) and (d) of the
18 Consumer Protection Law in the following ways:

- 19 a. §201-9.3(b)(2) states that a purchaser may choose the option allowing
20 him to "Return the dog to the seller for a replacement dog of equal
21 value of the purchaser's choice, providing a replacement dog is
22 available." Respondent's warranty requires the purchaser to wait
23 twelve (12) months for a replacement puppy thereby conflicting with
24 the Consumer Protection Law, and
- 25 b. §201-9.3(d) requires that refunds or reimbursements required by this
26 section be made no later than fourteen days following receipt of the
27 veterinarian's certification. Respondent's warranty requires
28 purchasers to wait twelve (12) months to determine if a replacement

puppy is available which is beyond the fourteen (14) days provided by the Consumer Protection Law.

11. The Commonwealth alleges that the Respondent's conduct misrepresents and causes confusion and misunderstanding as to consumers' rights under §201-9.3 of the Consumer Protection Law in violation of §201-2(4)(ii), (iii), (v) and (xxi) of the Consumer Protection Law.

8 **WHEREAS**, the Commonwealth agrees to accept this Assurance of Voluntary
9 Compliance pursuant to §201-5 of the Consumer Protection Law in lieu of commencing
10 statutory proceedings pursuant to §201-4 thereof;

11 **WHEREAS**, under the Consumer Protection Law this Assurance of Voluntary
12 Compliance shall not be construed as an admission of a violation for any purpose.

13 **NOW THEREFORE**, effective from the date of the signing of this Assurance of
14 Voluntary Compliance, while engaged in the offer for sale or sale of puppies within the
15 Commonwealth, Respondent agrees for herself, her heirs, her administrators, successors,
16 assigns, agents, employees and all persons acting on her behalf, directly or through any
17 corporate or other business devices as follow:

18 I. Respondent shall obtain proper licensure as required by the Dog Law, 3
19 P.S. §459-206(a).

20 II. Respondent shall post a summary of the provisions of §201-9.3 in a
21 conspicuous place at her business as required by §201-9.3(g)(1) of the
22 Consumer Protection Law. A copy of such a summary is attached hereto
23 and incorporated herein as Exhibit "B".

24 III. Respondent shall provide purchasers with a health record, which includes all
25 the information set forth in §201-9.3(a)(1)(i) through (vii) of the Consumer
26 Protection Law.

27 IV. Respondent's guarantee of good health shall be in compliance with §201-
28 9.3(a)(2)(ii) of the Consumer Protection Law and shall specifically include the

following statement in bold type on the guarantee of good health:

THIS GUARANTEE DOES NOT WARRANT THAT THIS DOG HAS BEEN EXAMINED BY A VETERINARIAN. THE PURCHASER IS ENCOURAGED TO HAVE THIS DOG EXAMINED BY A VETERINARIAN AS SOON AFTER PURCHASE AS IS FEASIBLE.

Respondent shall also verbally state the above facts to purchasers.

- V. Respondent shall modify her puppy sales agreement, which includes warranty information, so as to comply with the terms of §201-9.3 of the Consumer Protection Law within twenty (20) days of the signing of this Assurance of Voluntary Compliance. The Respondent's warranty may provide additional or greater protection to consumers than afforded by §201-9.3, but shall not provide less protection to consumers. Within five (5) days of the signing of this Assurance of Voluntary Compliance, the Respondent shall provide the Commonwealth with a copy of the modified warranty for its review and comment.
- VI. The Respondent shall pay consumer restitution, consistent with the §201-9.3(b) of the Consumer Protection Law, to any consumer who asserts that they were or would have been denied coverage under the Respondent's puppy warranty for the reasons identified in paragraph 9 of this Assurance of Voluntary Compliance and who submits a claim to the Respondent or the Commonwealth within sixty (60) days of the filing of this Assurance of Voluntary Compliance. Any restitution request that is postmarked by the (sixtieth) 60th day shall be deemed timely. Any requests made directly to the Respondent shall be forwarded to the Commonwealth at:

Office of Attorney General
Bureau of Consumer Protection
171 Lovell Avenue, Suite 202
Ebensburg, PA 15931

The Commonwealth will provide the Respondent with copies of all claims received. Eligible expenses must have been incurred by consumers between

1 August 24, 1997, and February 28, 2001. In order to be eligible for
2 restitution, consumers must provide documentation showing: (1) that their
3 dog was determined by a veterinarian to have a congenital or hereditary
4 defect within thirty (30) days of the date of purchase; and (2) that the dog
5 was treated by a veterinarian for the ailment or died. Consumers shall also
6 sign a statement indicating that they did not receive a cash refund , a
7 replacement dog or reimbursement for veterinarian bills from the
8 Respondent. Consistent with §201-9.3(b) of the Consumer Protection Law,
9 restitution for veterinarian fees shall be capped at the cost of the dog,
10 excluding sales tax, and initial examination fees and expenses unrelated to
11 the treatment of the ailment shall not be recoverable. Upon presentation to
12 the Respondent of a claim meeting the criteria of this paragraph, the
13 Respondent shall forward payment, in the name of the consumer, to the
14 Commonwealth within ten (10) business days.

15 VII. Simultaneous with the execution and return of this Assurance of Voluntary
16 Compliance, Respondent shall transmit to the Commonwealth the sum of
17 One Thousand and 00/100 Dollars (\$1,000.00) payable to the
18 Commonwealth of Pennsylvania, Office of Attorney General, Bureau of
19 Consumer Protection, which shall be allocated as follows:

- (i) A civil penalty in the amount of Five Hundred and 00/100 Dollars (\$500.00); and,
- (ii) Costs of investigation and/or for future public protection purposes in the amount of Five Hundred and 00/100 Dollars (\$500.00).

1 X. Any and all payments due and owing under this Assurance of Voluntary
2 Compliance shall be made by certified check, cashier's check, attorney's
3 check or money order, made payable to the Commonwealth of Pennsylvania,
4 and forwarded to the Office of Attorney General, Bureau of Consumer
5 Protection, 171 Lovell Avenue, Suite 202, Ebensburg, PA 15931.
6 XI. The Court shall maintain jurisdiction over the subject matter of this Assurance
7 of Voluntary Compliance and over the Respondent for the purpose of
8 enforcing this Assurance of Voluntary Compliance.

9
10 **NOW THEREFORE**, without admission of any violation for any purpose, the
11 Respondent agrees by the signing of this Assurance of Voluntary Compliance that she shall
12 henceforth abide by each of the aforementioned provisions and that the breach of any one
13 of these terms of this Assurance of Voluntary Compliance shall be sufficient cause for the
14 Commonwealth to petition the Clearfield County Court of Common Pleas or any other court
15 of competent jurisdiction, to hold the Respondent in contempt of court and to assess
16 penalties including, but not limited, to civil penalties and other penalties as provided for in
17 this Assurance of Voluntary Compliance, as well as, in 73 P.S. §§201-8, 201-9 and 201-9.1
18 of the Consumer Protection Law or any other relief which the Court deems necessary and
19 proper.

20 Provided, however, that nothing contained herein shall be construed to waive any
21 individual right of action by any consumer or any local, state, federal or other governmental
22 entity.

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1 This Assurance of Voluntary Compliance shall have the same force and effect as
2 a Permanent Injunction issued pursuant to §201-4 of the Consumer Protection Law.
3

4 Witness, the following signature this ^{14th} day of March, 2001.

5 FOR THE PETITION

6 D. MICHAEL FISHER
7 ATTORNEY GENERAL

8 FRANK T. DONAGHUE
9 CHIEF DEPUTY ATTORNEY GENERAL

10 E. Barry Creary
11 E. BARRY CREAMY
12 SENIOR DEPUTY ATTORNEY GENERAL

13

14 Margie A. Anderson
15 MARGIE A. ANDERSON
16 DEPUTY ATTORNEY GENERAL

17 FOR THE RESPONDENT

18 Mary Mann
19 MARY MANN, individually
20 and d/b/a MANN'S ST. BERNARDS

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EXHIBIT “A”

SPIKE

MR or MRS

Bought a STBERNARD

female or male color ~~black with almost~~ . It is 7 wks or older. Puppy is health guaranteed for 14 days from 3-3-00 . Only if you have LICENCED VETERINARIAN DR. Give you a paper stateing puppy was unfit for sale because of health defect caused by breeder only. Breeder is not responsible for any sickness or injuries caused by new owners or any thing else. I will exchange puppy for same quality puppy if I have one ready within 12 months. If I don't have a puppy ready by 3/4/01 . I will refund your \$350.00 total purchase price only. I do not pay any other expences at all. You get all this with puppy, vet checkup 2/28/00 shots 2/8/00 3-3-00 wormed 2/4/00 ~~2/18/00~~ 3-3-

IAMS food books health record pictures bowl leash pedigree. I ask for pictures and letters in future. To let me know how temperament looks and health is. Call if you have any questions. This price ~~is~~ AKC papers must get spayed or neutered \$350.00 This price with AKC papers \$450.00 full PUPPY WPF51780/05 whelped 1-10-00

SIRE TRROUBLE CHAMBER MANN AKC WPF8912509 1/04

DAM LIZZIE DA4221E MANN AKC WPF725236 1/04

If you agree with this contract sign date time with address & phone below.

BUYER SIGN

PRINT

ADDRESS

PHONE

DATE 3-3-00

TIME

BREEDER Wicki Mann Jr
/SALER/SIGN Wicki Mann Jr

PRINT Wicki Mann Jr

ADDRESS RR 1 Box 3

WOODLAND PA. 16881

PHONE (412) 852-3959 DATE

TIME

I will help in future if you can't keep a puppy find www.hannew.com

EXHIBIT "B"

PUBLIC NOTICE

This notice shall be conspicuously posted in the place of business of persons subject to this section as enforced by the Pennsylvania Office of Attorney General. This disclosure of rights is a summary of Pennsylvania Law. A written notice setting forth the rights provided under Section 9.3 of the Unfair Trade Practices and Consumer Protection Law shall be provided to you at the time of the sale. A civil penalty of up to \$1,000 shall be levied for each violation in addition to any other penalty under this act.

- 1. A seller shall provide you with a health record for the dog at the time of sale. The health record must contain information as required by the Law.**
- 2. The seller shall provide a health certificate issued by a veterinarian within 21 days prior to the date of sale OR a guarantee of good health issued and signed by the seller. The health certificate and the guarantee of good health must contain information as required by the Law.**
- 3. To preserve your rights under the Law, you must take your newly purchased dog to a licensed veterinarian for examination within 10 days of purchase. If a veterinarian determines, within 10 days of purchase, that your dog is clinically ill or has died from an injury sustained or illness likely to have been contracted on or before the date of sale and delivery, you have the following options:**
 - (a) Return the dog for a complete refund; (b) Return the dog for a replacement dog of equal value; OR (c) Retain the dog and receive reimbursement for reasonable veterinary fees, not exceeding the purchase price. These options do not apply where a seller, who has provided a health certificate issued by a veterinarian, discloses in writing at the time of sale the health problem for which the buyer later seeks to return the dog.
- 4. If, within 30 days of purchase, a licensed veterinarian determines that your dog has a congenital or hereditary defect which adversely affects the animal's health or that your dog died from a congenital or hereditary defect, you have the same options as outlined in Section 3 (above).**
- 5. Within 2 business days of a veterinarian's certification of your dog's illness, defect or death, you must notify the seller of the name, address and telephone number of the examining veterinarian. Failure to notify the seller within 2 business days will result in forfeiture of rights.**
- 6. Refunds or reimbursements shall be made no later than 14 days after the seller receives the veterinarian certification. Veterinarian certification shall be presented to the seller not later than 5 days after you receive it.**
- 7. Registerable Dogs — If the seller does not provide within 120 days all documentation to effect registration, you may exercise one of the following options:**
 - (a) Return the dog and receive a full refund of the purchase price; OR (b) Retain the dog and receive a 50% refund of the purchase price.
- 8. If registerable, the seller shall provide at the time of sale: the breeder's name and address, the name and registration number of the dam and sire, and the name and address of the pedigree registry organization where the dam and sire are registered.**

For further information concerning your rights under
Section 9.3 of the Unfair Trade Practices and Consumer Protection Law, contact:
Pennsylvania Office of Attorney General
Mike Fisher
Consumer Protection Hotline 1-800-441-2555
www.attorneygeneral.gov

FILED

APR 17 2001

11:30 AM
William A. Shaw
Prothonotary PO

80.-
By Comm.

3 CENT TO COMM.