S T A T E O F N E W Y O R K

5981

2009-2010 Regular Sessions

I N A S S E M B L Y

February 23, 2009

Introduced by M. of A. ABBATE -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to deceptive acts and practices

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision (h) of section 349 of the general business law, as amended by chapter 157 of the laws of 1984, is amended to read as follows:

(h) In addition to the right of action granted to the attorney general pursuant to this section, any person who has been injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. ANY PERSON WHO ASSERTS A CLAIM UNDER THIS SECTION IN A CLASS ACTION IS LIMITED TO RECOVERING ONLY ACTUAL DAMAGES. EACH PERSON SEEKING TO RECOVER DAMAGES UNDER THIS SECTION SHALL BE REQUIRED TO PROVE THAT THE DECEPTIVE ACT OR PRACTICE CAUSED HIM OR HER TO ENTER INTO THE TRANSACTION THAT RESULTED IN HIS OR HER DAMAGES. PROOF OF THE EXISTENCE OF AN UNFAIR OR DECEPTIVE ACT OR PRACTICE SHALL NOT SUPPORT AN AWARD OF DAMAGES WITHOUT PROOF THAT THE PERSON SEEKING DAMAGES SUFFERED AN ACTUAL OUT-OF-POCKET LOSS. FOR PURPOSES OF THIS SUBDIVISION, THE TERM "OUT-OF-POCKET LOSS" MEANS AN AMOUNT OF MONEY EQUAL TO THE DIFFERENCE BETWEEN THE AMOUNT PAID BY THE CONSUMER FOR THE GOOD OR SERVICE AND THE ACTUAL MARKET VALUE OF THE GOOD OR SERVICE THAT THE CONSUMER ACTUALLY RECEIVED. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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S 2. Subdivision 3 of section 350-e of the general business law, as amended by chapter 328 of the laws of 2007, is amended to read as follows:

3. Any person who has been injured by reason of any violation of section three hundred fifty or three hundred fifty-a of this article may bring an action in his or her own name to enjoin such unlawful act or practice, an action to recover his or her actual damages or five hundred dollars, whichever is greater, or both such actions. EACH PERSON SEEKING TO RECOVER DAMAGES UNDER THIS SECTION SHALL BE REQUIRED TO PROVE THAT THE DECEPTIVE ACT OR PRACTICE CAUSED HIM OR HER TO ENTER INTO THE TRANSACTION THAT RESULTED IN HIS OR HER DAMAGES. PROOF OF THE EXISTENCE OF AN UNFAIR OR DECEPTIVE ACT OR PRACTICE SHALL NOT SUPPORT AN AWARD OF DAMAGES WITHOUT PROOF THAT THE PERSON SEEKING DAMAGES SUFFERED AN ACTUAL OUT-OF-POCKET LOSS. FOR PURPOSES OF THIS SUBDIVISION, THE TERM "OUT-OF-POCKET LOSS" MEANS AN AMOUNT OF MONEY EQUAL TO THE DIFFERENCE BETWEEN THE AMOUNT PAID BY THE CONSUMER FOR THE GOOD OR SERVICE AND THE ACTUAL MARKET VALUE OF THE GOOD OR SERVICE THAT THE CONSUMER ACTUALLY RECEIVED. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages, up to ten thousand dollars, if the court finds that the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

S 3. This act shall take effect immediately and shall apply to all cases pending or filed on or after such effective date.