

**STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE**

In re:

**Advanced Resources, LLC d/b/a Patriot
Warranty**

Maine Unregistered Entity: UC92000616

Docket No. INS-22-207

DECISION AND ORDER

I.

PROCEDURAL HISTORY

On June 14, 2023 staff of the Bureau of Insurance (“Bureau staff”) submitted a Petition for Enforcement to the Acting Superintendent regarding Advanced Resources, LLC, d/b/a Patriot Warranty (“Patriot Warranty”). The Petition for Enforcement alleged that Patriot Warranty had committed the following violations of the Maine Insurance Code:

Count I

Patriot Warranty violated and continues to violate 24-A M.R.S. § 7103(4) by acting as an unregistered service contract provider and/or administrator in this State.

Count II

Patriot Warranty violated and continues to violate 24-A M.R.S. § 7109(1) by failing to make its records concerning D.B.’s service contract available to the Superintendent.

Count III

Patriot Warranty violated 24-A M.R.S. § 7110(1)(D)(1) by informing a Maine consumer that his service contract was void based on a prior owner’s use of the SUV.

Count IV

Patriot Warranty violated 24-A M.R.S. § 7110(1)(D)(4) by denying D.B.'s claim for engine repair to the SUV and cancelling D.B.'s contract based on a prior owner's use of the SUV.

Count V

Patriot Warranty violated 24-A M.R.S. § 7110(1)(D)(5) by failing to provide an accurate explanation of the basis for D.B.'s claim denial to D.B. and, subsequently, to the Superintendent.

Bureau staff requested that the Acting Superintendent initiate an adjudicatory proceeding in order to consider the following actions: issuing a cease and desist order requiring Patriot Warranty and its principals and agents to halt all activities related to offering, selling, and/or administering service contracts in Maine unless and until properly registered with the superintendent; imposing civil penalties against Patriot Warranty; ordering Patriot Warranty to make restitution to D.B., a Maine consumer who purchased a service contract from Patriot Warranty; and ordering such additional relief as deemed appropriate.

An Order Initiating Adjudicatory Proceeding and Notice of Hearing was issued scheduling a hearing for September 7, 2023 at 10 a.m. at 221 State St., Augusta, Maine in order to consider the violations alleged by Bureau staff. The Order was sent to Patriot Warranty by priority and certified mail to 101 S. Reid Street, Sioux Falls, South Dakota, 57103 and was sent to the known email addresses for the company.

Representatives for Patriot Warranty did not appear at the hearing and did not communicate with Bureau staff regarding the hearing. Bureau staff participated in the hearing, through Enforcement Attorney Kimberly Trombley. Bureau staff were also represented at the hearing by Lisa Wilson and Thomas Sturtevant, Assistant Attorneys General. The hearing proceeded as scheduled, and the matter was heard by the Acting Superintendent and Bureau Licensing Attorney Hancock Fenton.

Bureau staff submitted 16 exhibits that were entered into the record. Two witnesses testified at the hearing, D.B., the Maine consumer, and Sharon M. Martin, a Senior Insurance Analyst with the Bureau, who was involved in investigating a complaint filed by D.B. regarding the service contract he had purchased.

At the conclusion of the September 7, 2023 hearing, the record was held open until September 21, 2023, to allow Bureau staff to submit a post-hearing brief regarding the amount of

restitution requested for D.B. Following a request by Bureau staff, the record was held open for an additional eight days, and the record was closed on September 29, 2023. The Order to Enlarge Time and Bureau Staff's post-hearing brief have been entered into the record.

II.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

D.B., a Maine resident, purchased a 2014 GMC Terrain SUV in the fall of 2019. After researching several possible extended warranty or service contract options for the vehicle, D.B. completed an on-line application to purchase a service contract from Patriot Warranty. The contract purchase was completed on April 4, 2020. During the application process, D.B. provided the information requested by Patriot Warranty, including the vehicle mileage and the VIN number. As part of the application process, D.B. was required to submit photographs of the vehicle. After his initial submission of photographs, Patriot Warranty requested additional photographs, which D.B. provided.

D.B. used a credit card to pay \$1,711 for the service contract. The service contract was for the time period of April 4, 2020 through April 4, 2024, or for 80,000 miles. The starting mileage was 108,728, and the ending mileage was 188,728.

Covered repairs were performed on the vehicle three or four times after D.B. purchased the service contract, and the repairs were paid for pursuant to the terms of the service contract. In July 2021, however, the vehicle needed a new engine. D.B. received an estimate from a local car dealer of approximately \$10,000 for this repair. A claim was opened with Patriot Warranty for the engine replacement, and Patriot Warranty asked for additional information over a period of several weeks. Patriot Warranty eventually notified D.B. in a phone call that it would not pay for the engine repair and that it was cancelling his contract "immediately." Patriot Warranty told D.B. the cancellation was because the SUV had been used as a commercial vehicle. Patriot Warranty indicated that it ran a vehicle history search after being notified of the claim for the engine replacement and during the vehicle history search discovered the commercial use. D.B. had not used the vehicle for commercial purposes.

After being informed that Patriot Warranty had cancelled his policy due to the commercial use of the vehicle, D.B. requested a refund of the money he had paid for the service

contract. In order to obtain the refund, Patriot Warranty emailed D.B. instructions to use an on-line form to cancel the contract. The form required D.B. to indicate that he was cancelling the contract, even though he had previously been told by Patriot Warranty that the contract was cancelled “immediately” when the engine replacement claim was denied. The form did not provide another option, so D.B. testified that he felt he had to indicate on the form that he was cancelling the contract in order to obtain the refund. There is no evidence in the record that a written cancellation notice was mailed to D.B. After D.B. made several attempts to find out what refund would be provided, a credit was returned to his credit card of \$530.00. D.B. subsequently paid for the engine replacement, at a cost of \$8,310.84.

In April 2022, D.B. filed a complaint with the Bureau. Bureau staff sent a complaint inquiry to Patriot Warranty on April 15, 2022. The inquiry requested: 1) a complete and detailed timeline/summary of the claim handling; 2) all communications with D.B. regarding the complaint; 3) a copy of the contract and all other associated claim documents; and 4) copies of all adjuster reports/estimates of damage. Patriot Warranty did not provide the Bureau with the requested information. Instead, Patriot Warranty sent an email to the complaint investigator stating the cancellation and refund were based on D.B.’s non-compliant application and the non-compliant usage of his truck. Patriot Warranty also stated that the vehicle had a history of commercial ownership and usage. Included with the response was a copy of a CARFAX report, dated August 10, 2021.

Subsequent emails sent by Bureau staff to Patriot Warranty on May 3, 2022 and May 20, 2022 requesting a complete response were not answered. Letters sent by Bureau staff to Patriot Warranty on May 31, 2022, July 12, 2022 and October 5, 2022 similarly were not answered. At all time periods related to this proceeding, Patriot Warranty was not registered with the Bureau as a service contract provider.

Requirements for Service Contract Providers and Administrators Under Chapter 91

Service contract providers and administrators transacting business in Maine must comply with the requirements of Chapter 91 of Title 24-A of the Maine Revised Statutes.

The definition of a “service contract” in 24-A M.R.S. § 7102(11) includes:

“...a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement or maintenance of property or to indemnify for the repair, replacement or maintenance for an operational or structural failure of any motor vehicle or other property due to a defect in materials or workmanship or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances, including, but not limited to, towing, rental and emergency road service and road hazard protection.”

A service contract “provider” is “a person who is contractually obligated to a service contract holder under the terms of a service contract.” 24-A M.R.S. § 7102(8).

A service contract “administrator” is “the person who is responsible for the administration of a service contract program or who is responsible for any submission required by this chapter.” 24-A M.R.S. § 7102(1).

Pursuant to 24-A M.R.S. § 7103(4):

“[a] provider or administrator of service contracts issued, sold or offered for sale in this State shall apply for registration with the superintendent on a form prescribed by the superintendent, providing the registrant’s name, full business address, telephone number and contact person and designating an agent in this State for service of process. The registration must be updated by written notification to the superintendent if changes occur in the registration on file.”

Service contract providers and administrators must respond to inquiries of the superintendent and must “...make available to the superintendent all accounts, books and records concerning service contracts sold by the provider that are necessary to enable the superintendent to determine compliance or noncompliance with this chapter.” 24-A M.R.S. § 7109(1).

Pursuant to 24-A M.R.S. §7110(1)(D), “[a] person may not engage in [specified] claims practices in conscious disregard of this section and any rules adopted under this section or with such frequency as to indicate a general business practice of the person to engage in such conduct[.]”

Pursuant to 24-A M.R.S. §§ 12-A, 7109, and 7110, the superintendent may take enforcement action against any person who violates any provision of Chapter 91, the superintendent’s rules and orders, or other applicable provisions of Title 24-A.

The superintendent may issue a cease and desist order following an adjudicatory hearing, if the superintendent finds that any person has engaged in or is engaging in any act or practice in violation of any law administered or enforced by the superintendent, any rules promulgated under that law or any lawful order of the superintendent. 24-A M.R.S. §12-A(2).

The superintendent may order restitution against any person who violates any provision of Chapter 91. 24-A M.R.S. §§12-A(6), 7109(2).

Violations of Chapter 91

The evidence is clear that Patriot Warranty acted as a service contract provider and/or administrator in selling the service contract to D.B. and in administering the contract after its sale. Based upon the record, the following violations have been proven:

Count I - Patriot Warranty violated 24-A M.R.S. § 7103(4) by acting as an unregistered service contract provider and/or administrator in this State. The record shows that Patriot Warranty operated as an unregistered service contract provider and/or administrator when it sold the service contract to D.B. and throughout the time D.B. maintained the service contract.

Count II - Patriot Warranty violated 24-A M.R.S. § 7109(1) by failing to make its records concerning D.B.'s service contract available to the superintendent, and by failing to respond to other lawful inquiries of the superintendent. The record shows that on multiple occasions D.B. failed to respond to lawful inquiries of the superintendent and failed to provide requested documents and records.

Count III - Patriot Warranty violated 24-A M.R.S. § 7110(1)(D)(1) by informing D.B. that his service contract was cancelled due to commercial use by a prior owner of the vehicle.

The record shows that Patriot Warranty incorrectly informed D.B. that his service contract was void based on a prior owners' commercial use in violation of 24-A M.R.S. §7110(1)(D)(1). D.B. did not use the vehicle at issue for a commercial purpose. The service contract, sold to D.B. defines a "[c]ommercial use or purpose" as "any use of YOUR VEHICLE for commerce or trade or to generate income, whether such use is full or part time." The contract further defines "You" and "Your" to mean "the VEHICLE SERVICE CONTRACT holder named on the STATEMENTS PAGE, as the person entitled to benefits under this VEHICLE

SERVICE CONTRACT.” D.B. is the person named on the Statements Page. There is no evidence in the record that D.B. used *his vehicle* for a commercial use or purpose.

The concern about prior commercial use of the vehicle could easily have been discovered in the underwriting process, when Patriot Warranty obtained the information needed to determine any past commercial use that might have been a concern. This only became a concern when D.B. submitted a claim for an otherwise covered repair.

Count IV - Patriot Warranty violated 24-A M.R.S. § 7110(1)(D)(4) by denying D.B.’s claim for engine repair to the SUV and cancelling D.B.’s contract based on a prior owner’s use of the SUV.

As discussed for Count III, Patriot Warranty improperly denied the claim for engine repair, without doing a reasonable investigation, and instead purported to cancel the contract immediately. Patriot Warranty also violated 24-A M.R.S. § 7105(11) by cancelling the contract without the required prior written notice.

Chapter 91 establishes procedures that must be followed before a service contract may be cancelled. Written prior notice of the cancellation must be mailed to the contract holder at least 15 days prior to the date of cancellation under 24-A M.R.S. § 7105(11). In addition, the cancellation notice must state the reason and effective date of the cancellation. Patriot Warranty did not provide the required prior mailed written notice of cancellation to D.B. Instead, Patriot Warranty notified D.B. by phone of the “immediate” cancellation of his contract, and followed up with email instructions that would allow *him* to cancel the contract, so that he could obtain a partial refund.

Count V - Patriot Warranty violated 24-A M.R.S. § 7110(1)(D)(5) by failing to provide an accurate explanation of the basis for the claim denial to D.B. and, subsequently, to the superintendent.

Restitution

The Superintendent may order restitution against any person who violates any provision of Chapter 91. 24-A M.R.S. §§12-A(6); 7109(2).

Bureau staff requested \$1,180.36 in restitution as a refund for the purchase price of the contract, in addition to the cost of the engine replacement and additional repair costs following the engine replacement.

The evidence shows Patriot Warranty improperly sold the service contract at issue to D.B. D.B., of course, did not know Patriot Warranty was operating as an unauthorized service contract provider at the time of the purchase. The record shows that D.B. received a refund of \$536.64 on his purchase of the service contract. D.B. paid \$1,711.00 to purchase the contract. He also received payment for covered repairs on three or four occasions prior to the claim for the engine replacement, although the amount paid for those repairs is unclear. The evidence does not show that the \$536.64 refund was unreasonable, and Patriot Warranty is not ordered to pay restitution for the remaining purchase price of the contract.

D.B. had a reasonable expectation that his claim for the engine replacement would be covered, despite the disputed cancellation of the contract. Patriot Warranty failed to perform a reasonable investigation of the engine replacement claim as required by 24-A M.R.S. § 7110(1)(D)(4), and Patriot Warranty did not follow the cancellation procedures required by Maine law. Patriot Warranty should pay the cost of this claim that was pending while Patriot Warranty was investigating the validity of the contract.

The amount of the cost of the engine repair which Patriot Warranty should have paid was \$8,081.55. Patriot Warranty shall be responsible for paying restitution to D.B. in the amount of \$8,081.55.

Patriot Warranty is not ordered to pay restitution for the later repairs and services, when the contract was clearly no longer in effect.

III.

CONCLUSION AND ORDER

Based on the foregoing, and pursuant to 24-A M.R.S. §§ 12-A, 7109, 7110, it is hereby ordered:

1. Patriot Warrant shall pay a civil penalty in the amount of \$10,000 for each of the violations as described in Counts I through V, for a total civil penalty of \$50,000. The civil penalty shall be paid within 30 days of the date of this order. Payment shall be remitted to the Maine Bureau of Insurance and shall be made by a check payable to the Treasurer of the State of Maine.

2. Patriot Warranty shall pay restitution to D.B. in the amount of \$8,081.55. This payment shall be made within 30 days of the date of this order. Patriot Warranty shall submit proof of this payment to the Maine Bureau of Insurance within 10 days of the payment to D.B.

3. Patriot Warranty, its principals and agents are hereby ordered to immediately cease and desist offering and/or selling service contracts in Maine unless and until properly registered with the Maine Bureau of Insurance.

4. Patriot Warranty is ordered to provide the Maine Bureau of Insurance with a complete list of service contracts held by Maine residents in effect as of the date of this order. This list shall include contact information for all Maine residents and businesses that have purchased service contracts sold by Patriot Warranty, and the purchase price paid for all such contracts. This information shall be provided to Bureau staff within 30 days of the date of this order. In addition, Patriot Warranty shall provide any and all information required by Bureau staff related to the sales and payment of claims of any service contracts sold to Maine residents and businesses.

5. Bureau staff will provide further instructions regarding the disposition of any existing contracts following the receipt of the required information. Until such time as Patriot Warranty receives instructions from Bureau staff on the disposition of any existing service contracts, Patriot Warranty shall continue to investigate and pay all claims covered by service contracts currently in effect.

IV.

NOTICE OF APPEAL RIGHTS

This Decision and Order is a final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act. It may be appealed to the Superior Court in the manner provided by 24-A M.R.S. § 236, 5 M.R.S. § 11001, et seq. and M.R. Civ. P. 80C. Any party to the proceeding may initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal within forty days of the issuance of this decision. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S. § 11004.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

Dated: November 8, 2023



TIMOTHY N. SCHOTT
Acting Superintendent of Insurance