

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 19-cv-05086
)	
SHUR-WAY MOVING AND CARTAGE)	
COMPANY, INC. and DOUG)	Judge John J. Tharp, Jr.
BRZEZINSKI,)	
)	
Defendants.)	

CONSENT ORDER

I. INTRODUCTION

1. This Consent Order resolves the allegations contained in the United States' Complaint that Defendants Shur-Way Moving and Cartage Company, Inc. and Doug Brzezinski (collectively "Defendants") violated the Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C. §§ 3901-4043, when they auctioned off the belongings of U.S. Navy 02E-Lieutenant Junior Grade ("LTJG") Miguelina Dominguez while she was in military service.

2. Defendant Shur-Way Moving and Cartage (Shur-Way) is an Illinois corporation with a principal place of business at 1943 Industrial Drive, Libertyville, Illinois 60048.

3. Defendant Doug Brzezinski is the President and owner of Shur-Way.

4. The Parties agree that the Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1345, and 50 U.S.C. § 4041.

5. The Parties agree that, to avoid costly and protracted litigation, the claims against

Defendants should be resolved without further proceedings or an evidentiary hearing. Therefore, as indicated by the signatures appearing below, the United States and Defendants agree to the entry of this Consent Order.

6. The effective date of this Consent Order will be the date on which it is approved and entered by the Court.

It is hereby ORDERED, ADJUDGED, and DECREED:

II. INJUNCTIVE RELIEF¹

7. Defendants, their officers, employees, agents, representatives, assigns, successors-in-interest, and all persons and entities in active concert or participation with Defendants (including contractors and vendors) are hereby enjoined from enforcing storage liens on the personal property of SCRA-protected servicemembers without a court order, during, or 90 days subsequent to, the servicemember's military service.

III. COMPLIANCE WITH THE SCRA AND SCRA POLICIES AND PROCEDURES

8. Within 30 calendar days of the effective date of this Consent Order, Defendants shall develop SCRA Policies and Procedures for Enforcing Storage Liens in compliance with 50 U.S.C. § 3958. These policies and procedures must include the following:

- a. In addition to any other reviews Defendants may perform to assess eligibility under the SCRA, before enforcing a storage lien through auctioning stored goods, Defendants will attempt to determine whether the customer is a servicemember who is in a period of military service or within 90 days thereafter by: reviewing any military service information

¹ Nothing in this Consent Order shall preclude Defendants from offering greater protections to servicemembers than those afforded by the Consent Order or the SCRA

(including orders) it has received; and searching the publicly available Department of Defense Manpower Data Center ("DMDC") for evidence of SCRA eligibility by either (a) last name and social security number or (b) last name and date of birth.²

- b. If Defendants find, as part of the review required before enforcing a storage lien, that the customer is a servicemember in military service or within 90 days thereafter, Defendants (or their agents, including contractors and vendors) shall not enforce a storage lien without first obtaining a court order allowing them to do so.
- c. If Defendants find, as part of the review required before enforcing a storage lien, that the customer is not a servicemember in military service or within 90 days thereafter, and Defendants pursue the public auction of a storage unit, Defendants shall ensure that the storage unit prepared for sale matches the name of the customer that Defendant searched in the DMDC, to ensure that no servicemember's storage unit is mistakenly sold.
- d. If Defendants pursue a storage lien action in court and the SCRA-protected customer fails to answer the action, before seeking default judgment, Defendants will file an affidavit of military service with the court as required by 50 U.S.C. § 3931(b)(1)(A) stating that "the defendant is in military service" or "was within 90 days of military service at the time of default" and attach the most recent military status

² Defendants may also request SCRA certificates of service by sending correspondence to the appropriate military office.

report from the DMDC or a copy of the military orders to the affidavit.

- e. If Defendants initiate and pursue a waiver under a written agreement as provided in 50 U.S.C. § 3918, Defendants must initiate the waiver process with the servicemember at least 30 calendar days in advance of enforcing any anticipated storage lien by sending a notice and a copy of the proposed waiver to the servicemember. To the extent Defendants exercise this right, Defendants shall use a notice in the form attached as Exhibit A.

9. No later than 30 calendar days after the effective date of this Consent Order, Defendants shall provide a copy of the proposed SCRA Policies and Procedures required under Paragraph 8 to counsel for the United States.³ The United States shall respond to Defendants' proposed SCRA Policies and Procedures within 45 calendar days of receipt. If the United States objects to any part of Defendants' SCRA Policies and Procedures described in Paragraph 8, the Parties shall confer to resolve their differences. If the Parties cannot resolve their differences after good faith efforts to do so, any Party may bring the dispute to this Court for resolution. Defendants shall implement the SCRA Policies and Procedures within ten (10) calendar days of approval by the United States or the Court.

10. If, at any time during the term of this Consent Order, Defendants propose to materially change their SCRA Policies and Procedures described herein, they shall first provide a copy of the proposed changes to counsel for the United States. If the United States does not deliver written objections to Defendants within forty-five (45) calendar days of receiving the

³ All materials required by this Consent Order to be sent to counsel for the United States shall be sent by commercial overnight delivery addressed as follows: U.S. Attorney's Office, Civil Division, 219 S. Dearborn Street, Chicago, Illinois 60604, Attn: Scott D. Heffron, AUSA.

proposed changes, the changes may be implemented. If the United States makes any objections to the proposed changes within the 45-day period, the specific changes to which the United States objects shall not be implemented until the objections are resolved pursuant to the process described in Paragraph 9.

IV. TRAINING

11. Defendants shall provide SCRA compliance training to any management officials or other employees who are involved in enforcing storage liens (hereinafter "covered employees") within forty-five (45) calendar days after Defendants' new training program is approved by the United States or the Court pursuant to Paragraph 14. Defendants shall also follow these training procedures for all of their employees who subsequently become covered employees within thirty (30) calendar days of their hiring, promotion, or transfer. Defendants shall provide to each covered employee training on:

- a. the terms of the SCRA specific to the employee's responsibilities;
- b. the terms of Defendants' SCRA Policies and Procedures (both those required pursuant to Paragraph 8 and all others adopted by Defendants) specific to the employee's responsibilities; and
- c. the terms of this Consent Order specific to the employee's responsibilities.

12. During the term of this Consent Order, Defendants shall provide annual SCRA training, with the same content as described in Paragraph 11, to covered employees with respect to their responsibilities and obligations under the SCRA, the SCRA Policies and Procedures, and the terms of this Consent Order.

13. Within forty-five (45) calendar days of the United States' approval of the SCRA Policies and Procedures pursuant to Paragraph 9, Defendants shall provide to the United States

the curriculum, instructions, and any written material included in the training required by Paragraphs 11 and 12.

14. The United States shall have forty-five (45) calendar days from receipt of these documents to raise any objections to Defendants' training materials, and, if it raises any, the Parties shall confer to resolve their differences. In the event they are unable to do so, either party may bring the dispute to this Court for resolution.

15. The covered employees may undergo the training required by Paragraphs 11 and 12 via live training, computer-based training, web-based training, or via interactive digital media. If the training is conducted in any format other than live training, Defendants shall ensure that covered employees have the opportunity to have their questions answered by a company contact that Defendants identify as having SCRA expertise within two business days of the training. Any expenses associated with the training program required by Paragraphs 11 and 12 shall be borne by Defendants.

16. Defendants shall secure a signed statement in the form attached as Exhibit B⁴ from each covered employee at the training required by Paragraphs 11 and 12 acknowledging that he or she has received, read, and understands the Consent Order and the SCRA Policies and Procedures specific to the employee's responsibilities associated with storage liens, has had the opportunity to have his or her questions about these documents answered, and agrees to abide by them. For the duration of this Consent Order, copies of those signed statements shall be provided to the United States upon request. Defendants shall also certify in writing to counsel for the United States that the covered employees successfully completed the training required by Paragraphs 11 and 12.

⁴ The electronic signature of a covered employee shall be deemed satisfactory for purposes of verifying completion of the training required under this Consent Order.

V. COMPENSATION FOR AGGRIEVED SERVICEMEMBER

17. Defendants shall provide \$20,000.00 in compensation to LTJG Dominguez.

18. In order to receive compensation under Paragraph 17, LTJG Dominguez must complete a copy of the Release attached as Exhibit C.

19. Within ten (10) days of notification by the United States that a Release has been received, Defendants shall deliver to counsel for the United States a certified check payable to Miguelina Dominguez.

20. When counsel for the United States has received a check from Defendants payable to Miguelina Dominguez, counsel for the United States shall deliver the check to her and the original, signed Release to counsel for Defendants.

21. Defendants will not be entitled to a set-off, or any other reduction, of the amount of compensation payment required by Paragraph 17 because of any debts owed by the recipient. Defendants also will not refuse to make a payment based on a release of legal claims made prior to the entry of this Consent Order or an arbitration agreement.

VI. CREDIT REPAIR AND OTHER RELIEF

22. If LTJG Dominguez reports during the term of this Consent Order any credit issue relating to the storage lien at issue in this Consent Order, Defendants will request in writing that all credit bureaus to which Defendants report delete trade lines for accounts belonging to her, and Defendants shall not pursue, and must indemnify her against any third-party pursuing any deficiency that was remaining on her storage contract after her belongings were auctioned off.

VII. CIVIL PENALTY

23. Within ten (120) calendar days of the effective date of this Order, Defendants shall pay a total of Ten-Thousand Dollars (\$10,000.00) to the United States Treasury as a civil penalty pursuant to 50 U.S.C. § 4041(b)(3) and 28 C.F.R. 85.5 to vindicate the public interest. The payment shall be made in the form of an electronic funds transfer pursuant to written instructions to be provided by the United States.

VIII. ADDITIONAL REPORTING AND RECORD-KEEPING REQUIREMENTS

24. For the duration of this Consent Order, Defendants shall retain all records relating to their obligations hereunder, including their records with respect to all storage lien auctions and all records relating to compliance activities as set forth herein. The United States shall have the right to review and copy any such records, including electronic data, upon reasonable request during the term of this Consent Order.

25. During the term of this Consent Order, Defendants shall notify counsel for the United States in writing every three months of receipt of any SCRA or military-related complaint. Defendants shall provide a copy of any written complaints with the notifications. Whether regarding a written or oral SCRA complaint, the notification to the United States shall include the full details of the complaint, including the complainant's name, address, and telephone number. Defendants shall also promptly provide the United States all information it may request concerning any such complaint and shall inform the United States in writing within thirty (30) calendar days of the terms of any resolution of such complaint. If the United States raises any objections to Defendants' actions, the Parties shall meet and confer to consider appropriate steps to address the concerns raised by the United States' review. If the Parties are unable to come to an agreement regarding such objections or concerns, any party may bring the

dispute to this Court for resolution.

IX. SCOPE OF CONSENT ORDER

26. The provisions of this Consent Order shall apply to Defendants and any of their subsidiaries, predecessors, acquired companies, or successors. It shall also apply to the officers, employees, agents, representatives, assigns, successors-in-interest, and all persons and entities in active concert or participation with all of those entities.

27. In the event that Defendants are acquired by or merge with another entity, Defendants shall, as a condition of such acquisition or merger, obtain the written agreement of the acquiring or surviving entity to be bound by any obligations remaining under this Consent Order for the remaining term of this Consent Order.

28. This Consent Order does not release claims for practices not addressed in the Complaint's allegations, and it does not resolve and release claims other than claims for violations of 50 U.S.C. § 3958 that may be brought by the United States with respect to LTJG Dominguez. This Consent Order does not release any claims that may be held or are currently under investigation by any other federal agency.

29. Nothing in this Consent Order will excuse Defendants' compliance with any currently or subsequently effective provision of law or order of a regulator with authority over Defendants that imposes additional obligations on it.

30. The Parties agree that, as of the effective date of this Consent Order, litigation is not "reasonably foreseeable" concerning the matters described above. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information (ESI), or things related to the matters described above, the party is no longer required to maintain such litigation hold. Nothing in this Paragraph relieves any party of any other obligations imposed by this Consent Order.

**X. MODIFICATIONS, ATTORNEY'S FEES AND COSTS, AND
REMEDIES FOR NON-COMPLIANCE**

31. Any time limits for performance imposed by this Consent Order may be extended by the mutual written agreement of the Parties.

32. The Parties shall be responsible for their own attorney's fees and court costs, except as provided for in Paragraph 33.

33. The Parties shall endeavor in good faith to resolve informally any differences regarding the interpretation of and compliance with this Consent Order prior to bringing such matters to the Court for resolution. However, in the event the United States contends that there has been a failure by Defendants, whether willful or otherwise, to perform in a timely manner any act required by this Consent Order or otherwise comply with any provision thereof, the United States may move the Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring the performance of such act or deeming such act to have been performed, and an award of any damages, costs, and attorney's fees which may have been occasioned by Defendants' violation or failure to perform.

XI. RETENTION OF JURISDICTION

34. The Court shall retain jurisdiction over all disputes between and among the Parties arising out of the Consent Order, including but not limited to interpretation and enforcement of the terms of the Consent Order.

35. This Consent Order shall be in effect for a period of three (3) years from its date of entry, after which time this case shall be dismissed with prejudice. The United States may move the Court to extend the duration of this Consent Order in the interests of justice.

IT IS SO ORDERED:
This 2nd day of August, 2019.



HONORABLE
UNITED STATES DISTRICT JUDGE

By their signatures below, the Parties consent to the entry of this Consent Order.

For the United States:

JOHN R. LAUSCH, Jr.
United States Attorney
Northern District of Illinois

s/ Scott D. Heffron
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For Defendants:

A handwritten signature in cursive script, appearing to read "Doug Brzezinski", is written over a horizontal line.

Doug Brzezinski

EXHIBIT A

IMPORTANT NOTICE AFFECTING MILITARY SERVICEMEMBERS RIGHTS AND PROTECTIONS AFFORDED UNDER THE SERVICEMEMBERS CIVIL RELIEF ACT

Attached to this notice you will find a waiver of rights and protections that may be applicable to you and your dependents pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. § 3901, *et seq.* (the "SCRA"). The SCRA provides military personnel and their dependents with a wide range of legal and financial protections. Among other benefits and protections, the SCRA:

- Prohibits the enforcement of a storage lien without a court order,
- Postpones court actions against servicemembers under certain circumstances.

If you choose to sign the attached waiver, Shur-Way Moving and Cartage will have the option to proceed with enforcing a storage lien without the protections of the SCRA. If you do not sign this waiver, Shur-Way Moving and Cartage will be required to provide you the protections of the SCRA. Additionally, if Shur-Way Moving and Cartage takes you to court to enforce a storage lien and sell your stored goods, the court may take steps to ensure that a judgment is not entered against you if you are unable to appear due to your military service.

Before waiving these important statutory rights, you should consult an attorney regarding how best to exercise your rights or whether it is in your interest to waive these rights under the conditions offered by Shur-Way Moving and Cartage.

For More Information:

- **CONSULT AN ATTORNEY:** To understand fully your rights under the law, and before waiving your rights, you should consult an attorney.
- **JAG / LEGAL ASSISTANCE:** Servicemembers and their dependents with questions about the SCRA should contact their unit's Judge Advocate, or their installation's Legal Assistance Officer. A military legal assistance office locator for all branches of the Armed Forces is available at <http://legalassistance.law.af.mil/>.
- **MILITARY ONESOURCE:** "Military OneSource" is the U.S. Department of Defense's information resource. Go to <http://www.militaryonesource.com>.

EXHIBIT B

EMPLOYEE ACKNOWLEDGMENT

I acknowledge that on _____, 20____, I was provided training regarding SCRA compliance, a copy of the Consent Order entered by the Court in *United States v. Shur-Way Moving and Cartage Co. Inc. and Doug Brzezinski*, Case No. [#####] (N.D. Ill.), and copies of Shur-Way's SCRA Policies and Procedures which are applicable to my duties. I have read and understand these documents and have had my questions about these documents and the SCRA answered. I understand my legal responsibilities and shall comply with those responsibilities.

[PRINT NAME]

[SIGNATURE]

[JOB TITLE]

EXHIBIT C

RELEASE

In consideration for the Parties' agreement to the terms of the Consent Order entered by the United States District Court for the Northern District of Illinois in *United States v. Shur-Way Moving and Cartage Co. Inc. and Doug Brzezinski*, Case No. [####] (N.D. Ill.), and Shur-Way's payment to me of \$20,000.00, I, Miguelina Dominguez, hereby release and forever discharge all claims, arising prior to the date of this Release, related to the facts at issue in the litigation referenced above and related to the alleged violation of Section 3958 of the Servicemembers Civil Relief Act, that I may have against Shur-Way and all related entities, parents, predecessors, successors, subsidiaries, and affiliates and all of their past and present directors, officers, agents manager, supervisors, shareholders, and employees and their heirs, executors, administrators, successors or assigns.

Executed this _____ day of _____, 20____.

SIGNATURE:

PRINT NAME:
