

NORTH CAROLINA
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
15 CVS 7444

AMANDA BENNETT and
ERNEST BROOKS
on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

COMMERCIAL COLLEGE OF
ASHEBORO, INC., d/b/a
BROOKSTONE COLLEGE OF
BUSINESS,
F. JACK HENDERSON III, and
MARLENE HENDERSON

Defendants

FILED
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GUILFORD COUNTY, C.S.C.
BY *Jmy*

CLASS ACTION COMPLAINT AND JURY DEMAND

Plaintiffs Amanda Bennett and Ernest Brooks, individually and on behalf of a class of similarly situated persons, through their attorneys, allege:

Nature of Action

1. In May 2015, Brookstone College of Business ("Brookstone"), a for-profit college with campuses in Greensboro and Charlotte, suddenly closed without warning, leaving hundreds of students and graduates without the courses and placement services for which they had paid money and to which they had devoted substantial time and effort in an attempt to better themselves.

2. Defendants, who owned and operated Brookstone, shuttered the school without offering hundreds of adults in North Carolina who were students or graduates of the school any means of receiving the classes, refresher courses and job placement assistance for which they had paid.

3. At the time of the sudden closure, Defendants had been entrusted with millions of dollars from Plaintiffs and a class of similarly situated persons for courses and placement services that Brookstone summarily stopped providing.

4. This is a class action seeking damages and other remedies for Plaintiffs and a class of similarly situated individuals who were students or graduates of Brookstone at the time of its sudden closure.

Parties, Jurisdiction and Venue

5. At all relevant times, Plaintiff Amanda Bennett was a resident of High Point in Guilford County, North Carolina.

6. At all relevant times, Plaintiff Ernest Brooks was a resident of Asheboro in Randolph County, North Carolina or Whitsett in Guilford County, North Carolina.

7. At all relevant times, Defendant Commercial College of Asheboro, Inc., d/b/a Brookstone College of Business, was a North Carolina corporation with its principal office address in Chattanooga, Tennessee, and business college campus locations in Guilford County and Mecklenburg County. The registered agent for Commercial College of Asheboro, Inc. is Defendant F. Jack Henderson, III.

8. At all relevant times, Defendant F. Jack Henderson, III served as president/treasurer of Commercial College of Asheboro, Inc.

9. At all relevant times, Defendant Marlene Henderson served as vice president/secretary of Commercial College of Asheboro, Inc.

10. Upon information and belief, at all relevant times, Defendant F. Jack Henderson, III and Defendant Marlene Henderson wholly owned Commercial College of Asheboro, Inc.

11. At all relevant times, Commercial College of Asheboro, Inc. operated Brookstone with campuses in Charlotte, North Carolina and Greensboro, North Carolina.

12. Venue is proper in this county because many of the acts and conduct charged here occurred in Guilford County.

13. The Court has original jurisdiction over this action pursuant to N.C. Gen Stat. §7A-240.

14. The amount in controversy exceeds \$25,000 exclusive of interest and costs.

Class Action Allegations

15. Plaintiffs hereby incorporate by reference the preceding allegations.

16. Plaintiffs bring this lawsuit as a class action pursuant to Rule 23 of the North Carolina Rules of Civil Procedure.

17. Plaintiffs bring this lawsuit on behalf of a class of individuals who paid tuition to Brookstone for classes and placement services and who were either enrolled or had completed programs of study as of May 2015, when Brookstone suddenly closed ("the Class").

18. The Class – comprised of hundreds of adults – is so numerous as to make it impracticable to bring them all before the court.

19. Plaintiffs have a personal interest in issues of law or fact that are common with the class.

20. There are common issues of law or fact that predominate over issues affecting only individual class members.

21. The claims of Plaintiffs are typical of the claims of other members of the Class.

22. Plaintiffs will adequately represent the members of the Class.

23. The maintenance of this lawsuit as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice.

General Allegations

Brookstone's Programs Included Lifetime Placement Services and Refresher Courses

24. Plaintiffs incorporate by reference the preceding allegations.

25. At all relevant times, Brookstone was licensed to operate as a for-profit post-secondary school by the North Carolina State Board of Community Colleges with accreditation from the Accrediting Council for Independent Colleges and Schools.

26. From at least 1987 to May 2015, Brookstone operated campuses in Greensboro and Charlotte.

27. Brookstone offered diploma programs in accounting systems technology, office administration, medical office administration, medical assisting and pharmacy technology, as well as a certificate program in administrative assisting and computerized accounting.

28. Through marketing efforts that included direct mail, television advertising and telephone solicitation, Brookstone promoted its offerings to adults throughout the Piedmont Triad and Charlotte areas who were seeking to better themselves and to attain employment.

29. Brookstone's programs resulting in a certificate or diploma were costly. For example, in the 2013-14 timeframe, the total cost of Brookstone's medical assisting program was more than \$21,000; the total cost of Brookstone's medical office administration program was more

than \$15,000; the total cost of Brookstone's pharmacy tech program was nearly \$15,000; and the total cost of Brookstone's accounting systems technology program was nearly \$12,000.

30. Brookstone's costly programs included lifetime job placement services and refresher courses for graduates.

31. Brookstone's enrollment agreements expressly referenced placement assistance.

32. Brookstone's enrollment agreements expressly referenced Brookstone's college catalog.

33. Brookstone's college catalog stated "[t]he College maintains, as part of the Student Services Office, a graduate placement service. It is the goal of Student Services to assist graduates in obtaining desirable positions with opportunities for advancement in the career field for which they were trained."

34. Brookstone's college catalog stated, "Graduates of Brookstone College that are in good standing have the privilege of returning to refresh their knowledge and skills in coursework previously taken in their program of study which are still being offered by the college."

35. In addition, Brookstone's student handbook stated, "All Brookstone graduates in good standing that comply with the regulations of the institution have lifetime placement privileges and may take advantage of brush-up courses at the college."

36. Brookstone's student handbook stated that graduates could request additional placement assistance after obtaining a job.

37. Brookstone extensively marketed the lifetime placement services and refresher courses included in its programs as major benefits of choosing to enroll at Brookstone and pay tuition to the school.

38. For example, Brookstone's website stated that one of the reasons that students had selected the school was its "focus on career placement." The website stated, "With the ability to complete most programs in the span of a year or less, our placement coordinators work with students throughout the course of their studies and after graduation to find full-time placements and positions."

39. Brookstone's Linked In page stated, "Lifetime placement assistance is offered to all graduates."

40. Brookstone's president, F. Jack Henderson III, publicly touted Brookstone's placement services on television.

**Defendants Received Millions of Dollars
From Adults In North Carolina For Brookstone's Programs And Services,
But Failed To Provide Those Programs And Services**

41. Defendants have operated and controlled Brookstone for decades.

42. Upon information and belief, Defendant F. Jack Henderson III and Defendant Marlene Henderson are the sole owners of Defendant Commercial College of Asheboro, Inc., which does business as Brookstone (collectively, "the Hendersons").

43. In recent years, Defendants have received payments totaling millions of dollars from hundreds of adults in North Carolina, including Plaintiffs, for programs that included coursework, lifetime placement services and refresher courses.

44. Defendants knew that hundreds of adults in North Carolina had entrusted Defendants with millions of dollars to pay in advance for programs that included coursework, lifetime placement services and refresher courses.

45. Defendants knew or should have known that they had to take steps to plan for and provide the programs that included coursework, lifetime placement services and refresher courses for which hundreds of adults in North Carolina had paid.

46. Defendants failed to plan for and provide the programs that included coursework, lifetime placement services and refresher courses to hundreds of adults in North Carolina who had paid for these programs and services.

47. Instead of planning for and providing the programs that included coursework, lifetime placement services and refresher courses to hundreds of adults in North Carolina who had paid for these programs and services, Defendants closed Brookstone.

**In May 2015, Defendants Suddenly Closed Brookstone Without Advance Notice
Despite Having Been Entrusted With Funds For Programs
That Included Placement Services And Refresher Courses**

48. In May 2015, Defendants made the decision to close Brookstone.

49. Upon information and belief, the Hendersons personally participated in the decision to close Brookstone.

50. Upon information and belief, in deciding to close the school, the Hendersons took advantage of their position as owners and directors of Brookstone to act on behalf of their own interests to the detriment of hundreds of North Carolina adults who had paid for programs and services that they would not be able to receive.

51. Without advance notice to the hundreds of North Carolina adults who had paid for its programs, Defendants suddenly shut down Brookstone in May 2015.

52. Upon information and belief, Defendants' sudden closing of Brookstone violated standards and requirements imposed by its accrediting body, ACICS, which are incorporated here by reference.

53. Defendants provided no refunds to hundreds of North Carolina adults who had paid for its programs, including Plaintiffs.

54. At the time of Brookstone's closing, Defendants failed to secure any means for hundreds of North Carolina adults enrolled in classes at the Greensboro and Charlotte campuses to continue to receive the coursework, placement services and refresher courses for which they had paid money and devoted substantial time and effort.

55. As a result of Defendants' acts and omissions, hundreds of North Carolina adults suddenly were denied access to the coursework, placement services and refresher courses for which they had paid money and devoted substantial time and effort.

56. At the time of Brookstone's sudden closing, Plaintiff Amanda Bennett was in the middle of a term in the medical assisting diploma program with less than a year of coursework remaining. Ms. Bennett now cannot complete the coursework or receive the placement services or refresher courses for which she had paid money and devoted substantial time and effort.

57. At the time of Brookstone's sudden closing, Plaintiff Ernest Brooks, who had completed all coursework in the pharmacy technician diploma program, was scheduled to have a meeting with a Brookstone employee to receive job placement assistance. Mr. Brooks now cannot receive the placement services or refresher courses for which he had paid money and devoted substantial time and effort.

58. Many Brookstone students and graduates first learned of Brookstone's closing through media reports.

59. Many Brookstone students who had completed their program coursework requirements, including Plaintiff Ernest Brooks, were scheduled to participate in a graduate ceremony in June 2015, which Defendants also canceled.

Brookstone Became Insolvent Prior To Its Sudden Closing

60. As a result of acts and omissions by Defendants, Brookstone had become insolvent prior to its closing.

61. Despite having received millions of dollars from hundreds of adults in North Carolina for Brookstone's coursework, placement services and refresher courses, Brookstone had become insolvent by May 2015 due to acts and omissions by Defendants.

62. Defendants failed to reveal to Plaintiffs and the hundreds of adults in North Carolina that their acts and omissions had caused Brookstone to become insolvent despite advance payment of millions of dollars for coursework, placement services and refresher courses.

63. Each of the Defendants owed fiduciary duties to Plaintiffs and the hundreds of adults in North Carolina who had entrusted Brookstone with payments for coursework, placement services and refresher courses that Brookstone suddenly stopped providing at the time of its closing in May 2015.

The Hendersons Completely Controlled And Dominated Commercial College of Asheboro

64. Upon information and belief, the Hendersons completely dominated Commercial College of Asheboro's finances, policies and business practices.

65. Upon information and belief, with respect to the acts and omissions causing Brookstone to suddenly close, the Hendersons' domination over Commercial College of Asheboro was such that it had no separate mind, will or existence of its own.

66. Upon information and belief, the Hendersons used their complete domination over Commercial College of Asheboro to close the school suddenly without regard to Brookstone's duties and obligations to hundreds of North Carolina adults who had entrusted money to the school

and devoted substantial time and effort to coursework, placement services and refresher courses that summarily stopped as a result of the Hendersons' actions.

67. Upon information and belief, the Hendersons' decision to suddenly close Brookstone violated statutory and other legal duties and constituted a dishonest and unjust act in contravention of the legal rights of Plaintiffs and hundreds of North Carolina adults.

68. One effect of the decision to suddenly close Brookstone was the unilateral voiding of contracts entered into by the Commercial College of Asheboro with Plaintiffs and hundreds of North Carolina adults for coursework, placement services and refresher courses at Brookstone.

69. Upon information and belief, the Hendersons' decision to suddenly close Brookstone proximately caused injury to Plaintiffs and members of the Class.

Defendants Caused Substantial Harm To Hundreds of North Carolina Adults

70. As a result of Defendants' acts and omissions, Plaintiffs and members of the Class have suffered substantial harm, including loss of funds for programs to which they devoted substantial time and effort.

71. As a result of Defendants' acts and omissions, Plaintiff Amanda Bennett has suffered harm, including, but not limited to, not being able to complete the medical assisting diploma program or obtain placement services and refresher courses for which she paid money and devoted substantial time and effort.

72. As a result of Defendants' acts and omissions, Plaintiff Ernest Brooks has suffered harm, including, but not limited to, not being able to obtain placement services and refresher courses as part of the pharmacy technician program for which he paid money and devoted substantial time and effort.

Count I

Negligence – All Defendants

73. Plaintiffs hereby incorporate by reference the preceding allegations.
74. Defendants owed Plaintiffs and members of the Class duties of reasonable care.
75. Defendants breached their duties of reasonable care to Plaintiffs in numerous ways, including, but not limited to, by failing to take appropriate steps to plan for and provide coursework, placement service and refresher courses to Plaintiffs, by failing to provide a means for Plaintiffs to receive program coursework, placement services and refresher courses when closing the school, by failing to comply with requirements for school closure established by its accrediting body, and by suddenly closing the school without proper care.
76. Defendants' breaches have proximately caused harm to Plaintiffs and members of the Class.
77. Defendants are liable to Plaintiffs and members of the Class for damages incurred as a result of Defendants' negligence.

Count II

Breach of Fiduciary Duty – All Defendants

78. Plaintiffs hereby incorporate by reference the preceding allegations.
79. Defendants owed Plaintiffs and members of the Class fiduciary duties when Defendants were entrusted with program payments for coursework, placement assistance and refresher courses and when Defendants were deciding to shut down Brookstone.
80. Plaintiffs and members of the Class reposed trust and confidence in Defendants with regard to advance payments entrusted with them and with regard to the delivery of program

coursework, placement services and refresher courses for which they had paid money and devoted substantial time and effort.

81. Defendants stood in a position of special faith, confidence and trust with Plaintiffs and members of the Class with regard to advance payments and with regard to the delivery of program coursework, placement services and refresher courses.

82. Defendants breached their fiduciary duties to Plaintiffs and members of the Class in numerous ways, including by closing Brookstone without warning, by failing to reveal in advance to Plaintiffs and members of the Class that Brookstone would not provide coursework, placement services and refresher courses for which Plaintiffs were paying in advance, by failing to take steps to safeguard the funds necessary to provide the coursework, placement assistance and refresher courses for which Plaintiffs and members of the Class had paid, and by failing to ensure that program payments received from Plaintiffs and members of the Class were utilized for coursework, placement assistance and refresher courses for Plaintiffs.

83. Defendants are liable to Plaintiffs and members of the Class for damages caused by Defendants' breach of fiduciary duties.

Count III

Constructive Fraud – All Defendants

84. Plaintiffs hereby incorporate by reference the preceding allegations.

85. Defendants owed Plaintiffs and members of the Class fiduciary duties when they were entrusted with program payments for coursework, placement assistance and refresher courses and when they were deciding to shut down Brookstone.

86. Plaintiffs and members of the Class reposed trust and confidence in Defendants with regard to advance payments entrusted with them and with regard to the delivery of program

coursework, placement services and refresher courses for which they had paid money and devoted substantial time and effort.

87. Defendants stood in a position of special faith, confidence and trust with Plaintiffs and members of the Class with regard to advance payments and with regard to the delivery of program coursework, placement services and refresher courses.

88. Defendants breached their fiduciary duties to Plaintiffs and members of the Class in numerous ways, including by closing Brookstone without warning, by failing to reveal in advance to Plaintiffs and members of the Class that Brookstone would not provide coursework, placement services and refresher courses for which Plaintiffs and members of the Class were paying in advance, by failing to take steps to safeguard the funds necessary to provide the coursework, placement assistance and refresher courses for which Plaintiffs and members of the Class had paid, and by failing to ensure that program payments received from Plaintiffs and members of the Class were utilized for coursework, placement assistance and refresher courses for Plaintiffs and members of the Class.

89. In deciding to suddenly close Brookstone in the manner in which it was shut down and at a time when they were in receipt of advance payments for coursework, placement services and refresher courses from Plaintiffs and members of the Class, Defendants took advantage of their position of trust with Plaintiffs and members of the Class to the detriment of Plaintiffs and members of the Class.

90. Defendants are liable to Plaintiffs and members of the Class for damages caused by Defendants' breach of fiduciary duties.

Count IV

Unfair and Deceptive Trade Practices – Commercial College of Asheboro

91. Plaintiffs hereby incorporate by reference the preceding allegations.

92. Defendant Commercial College of Asheboro committed one or more unfair or deceptive acts with respect to Plaintiffs and members of the Class, including, but not limited to, representing that it would provide coursework, placement services and refresher courses to Plaintiffs and members of the Class that it did not after suddenly closing the school.

93. Defendant also engaged in practices that were unscrupulous and substantially injurious to consumers, including, but not limited to, marketing and selling coursework, placement services and refresher courses that it did not provide, suddenly closing Brookstone without notice, and failing to provide a means for receipt of prepaid coursework, placement services and refresher courses for which Plaintiffs and members of the Class had paid.

94. Defendant also engaged in practices that amounted to an inequitable assertion of its power or position, including, but not limited to, marketing and selling coursework, placement services and refresher courses that it did not provide, suddenly closing Brookstone without notice, and failing to provide a means for receipt of prepaid coursework, placement services and refresher courses for which Plaintiffs and members of the Class had paid.

95. The acts were in and affecting commerce.

96. The acts proximately caused injury to Plaintiffs and members of the Class.

97. Defendant is liable to Plaintiffs and members of the Class for damages caused by Defendant's unfair or deceptive trade practices under N.C. Gen. Stat. § 75-1.1

Count V

Breach of Contract – Commercial College of Asheboro

98. Plaintiffs hereby incorporate by reference the preceding allegations.

99. Defendant Commercial College of Asheboro, while doing business as Brookstone, entered into express or implied contracts with Plaintiffs and members of the Class to provide coursework, lifetime placement services and refresher courses for which Plaintiffs paid money and devoted substantial time and effort.

100. Defendant Commercial College of Asheboro breached its obligations to Plaintiffs and members of the Class when it closed and discontinued offering its coursework, placement services and refresher courses to Plaintiffs and members of the Class.

101. Plaintiffs and members of the Class have been damaged as a proximate result of Defendant's actions.

102. Defendant is liable to Plaintiffs and members of the Class for damages caused by Defendant's breach of contract.

Count VI

Promissory Estoppel – Commercial College of Asheboro

103. Plaintiffs hereby incorporate by reference the preceding allegations.

104. Plaintiffs and members of the Class reasonably relied on a promise of coursework, lifetime placement services and refresher courses when they paid money to Defendant Commercial College of Asheboro.

105. Plaintiffs and members of the Class reasonably relied on a promises of coursework, lifetime placement services and refresher courses when they devoted substantial time and effort to the pursuit of programs at Defendant Commercial College of Asheboro.

106. Defendant Commercial College of Asheboro's promises of coursework, lifetime placement services, and refresher courses are enforceable.

107. Defendant Commercial College of Asheboro breached its obligations to Plaintiffs and members of the Class when it closed and discontinued offering its coursework, placement services and refresher courses to Plaintiffs.

108. Plaintiffs and members of the Class have been damaged as a proximate result of Defendant's actions.

109. Defendant is liable to Plaintiffs and members of the Class for damages caused by Defendant's breach of contract.

WHEREFORE, Plaintiffs, on behalf of themselves and a class of similarly situated persons, pray for judgment as follows:

- A. Certifying this action to be a Class Action pursuant to Rule 23 of the North Carolina Rules of Civil Procedure, and approving the Named Plaintiffs as proper representatives of the Class and undersigned Counsel as class counsel;
- B. Holding all Defendants liable for negligence, breach of fiduciary duty and constructive fraud, and holding Defendant Commercial College of Asheboro, Inc. liable for violations of the Unfair and Deceptive Trade Practices Act, breach of contract and promissory estoppel;
- C. Holding Defendant F. Jack Henderson III and Defendant Marlene Henderson personally liable for all liability established against Defendant Commercial College of Asheboro, Inc. under the equitable doctrine of North Carolina's instrumentality rule;

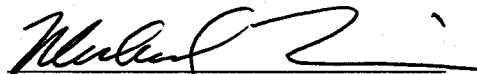
- D. Awarding Plaintiffs and Members of the Class damages as a result of the wrongs alleged herein, including treble damages recoverable under the Unfair and Deceptive Trade Practices Act; and,
- E. Awarding Plaintiffs and Members of the Class interest, costs and expenses, including reasonable attorneys' fees, including those recoverable under the Unfair and Deceptive Trade Practices Act, and all such other relief, as this Court may deem proper.

PLAINTIFFS DEMAND A TRIAL TO A JURY.

Dated this 23rd date of July 2015.

Respectfully submitted,

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