

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania, :
acting by former Attorney General, :
Thomas W. Corbett, Jr. :
 :
v. :
 :
Shafiq Hasan, individually and as :
President of Pro-Guard International, :
Inc., : No. 150 C.D. 2012
Appellant :

Commonwealth of Pennsylvania, :
acting by former Attorney General :
Thomas W. Corbett, Jr. :
 :
v. :
 :
Shafiq Hasan, Individually and as :
President of Pro-Guard International, :
Inc. :
 : No. 151 C.D. 2012
Appeal of: Shafiq Hasan : Argued: February 11, 2013

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY FILED: May 2, 2013

Shafiq Hasan (“Hasan”), individually and as President of Pro-Guard International, Inc. (“Pro Guard”), appeals from the order of the Court of Common Pleas of Bucks County (common pleas court) which denied his Motion to Strike and/or Open a Default Judgment and Petition to Modify the Injunction that were

entered against him pursuant to the Unfair Trade Practices and Consumer Protection Law, (UTPCPL), 73 P.S. §§201-1-201-9.2.¹

On August 27, 2008, the Commonwealth, by former Attorney General, Thomas W. Corbett, Jr., through the Bureau of Consumer Protection, filed a complaint against Hasan, a California resident, individually, and as President and sole shareholder of Pro Guard.² The complaint was brought pursuant to the UTPCPL, which authorizes the Attorney General to bring an action in the name of the Commonwealth to restrain, by temporary or permanent injunction, unfair methods of competition or unfair or deceptive acts or practices in the conduct of any trade or commerce declared unlawful.

The complaint alleged that Hasan engaged in unfair and deceptive practices³ when he failed to pay Pennsylvania consumers who entered into special "no claim bonus" contracts with Pro Guard as part of Pro Guard's warranty

¹ Act of December 17, 1968, P.L. 1224, *as amended*.

² Pro Guard had filed for bankruptcy under Chapter 7 of the Title 11 of the United States Code, 11 U.S.C. §§701-784, on April 18, 2007, in the Central District of California before the lawsuit was filed against Hasan. The bankruptcy was closed on January 25, 2008, as the Trustee found no assets available.

³ The complaint alleged that Hasan, as President and sole owner of the corporation who controlled, directed, ratified, approved the acts and practices of Pro Guard, violated the following Sections of the UTPCPL: Section 2(4)(v), 73 P.S. §201-2(4)(v), which prohibits representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have; Section 2(4)(ix), 73 P.S. §201-2(4)(ix), which prohibits advertising goods or services with intent not to see them as advertised; Section 2(4)(xiv), 73 P.S. §201-2(4)(xiv), by failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to or after a contract for the purchase of goods or services; and Section 2(4)(xxi), 73 P.S. §201-2(4)(xxi), which prohibits engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

coverage for the consumer's new or used vehicles. The complaint alleged that Hasan/Pro Guard failed to refund consumers a "no claim bonus" despite the fact that consumers met the requisite criteria and "incurred no claim expense" during the term of the service contract. Complaint, ¶¶19-21 at 5; Reproduced Record (R.R.) at 10. The complaint sought full restitution to all consumers who suffered losses as a result of Hasan's acts and practices, civil penalties and an order permanently enjoining Hasan in any capacity from doing business in Pennsylvania and requiring Hasan to forfeit his right to do business in Pennsylvania until he paid full restitution, refunds and civil penalties.

Hasan's Pennsylvania counsel filed an answer and new matter on November 26, 2008. The Commonwealth served Hasan with interrogatories and requests for production of documents. Responses were due January 16, 2009. Hasan's counsel requested additional time and he was granted an extension until February 17, 2009. Hasan did not meet the deadline. However, a week later, Hasan provided discovery responses which the Commonwealth considered to be incomplete and nonresponsive.

The Commonwealth moved to compel. Hasan did not respond. On September 29, 2009, the common pleas court ordered Hasan to serve full and complete answers within thirty days. Hasan did not comply with the court's order. On November 10, 2009, eleven months after the discovery responses were originally due, the Commonwealth moved for sanctions. A hearing was scheduled for March 11, 2010. Hasan's attorney indicated that he was unsuccessful in his attempts to contact Hasan in order to complete the discovery requests. The

common pleas court entered a default judgment against Hasan on March 11, 2010, for violation of its order dated September 28, 2009.⁴

One day after the default judgment was entered, Hasan's California bankruptcy counsel filed a "Notice of Bankruptcy Filing" on March 12, 2010, in the court of common pleas, which stated that Hasan had personally filed a "Chapter 7" petition on February 11, 2010, which "stayed all judicial proceedings" against Hasan.

On May 21, 2010, the Commonwealth filed a "Motion to Enter Adjudication of the Default Judgment." In this motion the Commonwealth asked the common pleas court to adopt the Commonwealth's proposed findings of fact and conclusions of law and enter a Final Decree. The Commonwealth argued that in light of the default judgment, the averments of fact in the complaint must be deemed to be true. King v. Township of Leacock, 552 A.2d 741 (Pa. Cmwlth. 1989) and Pennsylvania Rule of Civil Procedure No. 1029(b).

The common pleas court scheduled a hearing on the Commonwealth's "Motion to Enter Adjudication of the Default Judgment" for November 23, 2010. Hasan did not attend. His Pennsylvania attorney attended.

On January 21, 2011, the common pleas court issued an Adjudication with findings of fact, conclusions of law, and a Final Decree. The Final Decree permanently enjoined Hasan from future violations of the UTPCPL, imposed civil

⁴ Pa.R.C.P. No. 4019 authorizes a common pleas court to enter a default judgment against a defendant who fails to comply with the common pleas court's discovery orders.

penalties, restitution, costs and attorney's fees, and ordered Hasan to forfeit his right to engage in any business within Pennsylvania until he paid full restitution, refunds and civil penalties. Upon praecipe of the Commonwealth, a judgment was entered against Hasan for over \$1 million on March 16, 2011.

On April 8, 2011, new counsel entered an appearance on behalf of Hasan. On April 14, 2011, Hasan filed a "Petition to Strike and/or Open Judgment docketed March 16, 2011." Hasan sought discovery and the deposition of Janis Parrilla, a Consumer Protection Agent Supervisor. The Commonwealth objected and Hasan moved to compel. The Commonwealth sought a protective order which was granted after a hearing.

On November 18, 2011, nearly nine months after the Final Decree was entered on March 16, 2011, Hasan filed a "Petition to Modify Injunction/Final Order Relating to Forfeiture of the Right to Do Business" (hereinafter "Petition to Modify the Injunction") in order "to protect his right to do business in Pennsylvania." Hasan's Brief at 13. He argued that the common pleas court was without authority under the UTPCPL to order the forfeiture of his right to do business in Pennsylvania. He argued that under Section 9 of the UTPCPL, 73 P.S. §201-9⁵, a court may only order the forfeiture of a right to do business in the

⁵ Section 9 of the UTPCPL provides:

Upon petition by the Attorney General, the court having jurisdiction, may, in its discretion, order the dissolution, suspension or forfeiture of the franchise or right to do business of any person, firm or corporation which violates the terms of an injunction issued under section 4 of this act. In addition, the court may appoint a receiver of the assets of the company.

73 P.S. §201-9.

Commonwealth if there was a violation of the terms of a previous injunction issued under Section 4 of the UTPCPL, 73 P.S. §201-4. Hasan argued that he never violated a previous injunction; therefore, it was premature for the Commonwealth to seek such relief.⁶

The Commonwealth moved to dismiss the Petition to Modify the Injunction on the grounds that it was untimely, that Hasan waived his right to object to the Final Decree, and that his Motion to Modify the Injunction was merely a reiteration of his pending Motion to Open/Strike. On January 5, 2012, the common pleas court dismissed Hasan's Petition to Modify the Injunction with Prejudice.

On January 31, 2012, the common pleas court denied Hasan's Petition to Strike and/or Open Judgment.

Hasan now appeals from the January 5, 2012, and January 31, 2012, orders.

On appeal, Hasan raises nine issues.⁷ He raises three issues which relate to the common pleas court's denial of his Petition to Modify the Injunction.

⁶ In its prayer for relief, the Commonwealth sought an injunction and the forfeiture of Hasan's right to do business until full restitution was made and all civil penalties, restitution, costs and attorneys' fees were paid.

⁷ They are:

1. Whether it was an error to deny, without a hearing Hasan's Motion to Modify the Injunction/Final Order which barred him from doing business in Pennsylvania where such a remedy is procedurally premature under §201-9 of the Unfair Trade Practices and Consumer Protection Law (UTPCPL), 73 P.S. §§201-1-201-

(Footnote continued on next page...)

He raises six issues which relate to the common pleas court's denial of his Petition to Open and/or Strike. Issues have been consolidated for purposes of discussion.

(continued...)

9.2, and a permanent injunction had not been previously imposed upon Hasan?

2. Whether the Attorney General's request for an injunction to forfeit an individual's right to do business in Pennsylvania is a permissible remedy under §201-9 of the UTPCPL, where no prior injunction had been entered against Hasan under §201-4?

3. Whether Hasan's due process rights were violated when the Attorney General sought an absolute bar against Hasan's right to employment in Pennsylvania pending payment of a judgment, when the Attorney General was not entitled to such relief under §201-9 of the UTPCPL?

4. Whether it was an error to deny Hasan's Petition to Strike and/or Open Judgment without a hearing, briefs or following Buck's County Local Rule of Civil Procedure No. 208.3(b)?

5. Whether it was an error to deny Hasan's Petition to Strike and/or Open Judgment when the portion of the judgment for consumer restitution was discharged in Hasan's Chapter 7 Bankruptcy?

6. Whether it was an error to deny Hasan's Petition to Strike and/or Open Judgment when a portion of the judgment consisted of attorney's fees and costs, when such claims were discharged in Hasan's Chapter 7 Bankruptcy?

7. Whether it was an error to deny Hasan's Petition to Strike and/or Open Judgment when a portion of the judgment consisted of attorney's fees and costs, despite this Court's ruling that the Attorney General is not entitled to such fees and costs under the UTPCPL?

8. Whether it was an error to deny Hasan's Petition to Strike and/or Open Judgment when the action for civil penalties was commenced after the applicable two-year statute of limitations expired?

9. Whether Hasan's due process rights were violated when the [common pleas] court disposed of the Petition to Strike and/or Open Judgment without a hearing and denied Hasan the right of discovery?

Hasan's Brief at 8-9.

I.

Issues relating to January 5, 2012 Order which Denied Hasan's Petition to Modify the Injunction

In issues one through three, Hasan argues that his Petition to Modify the Injunction should have been granted because the Final Decree, which ordered him to forfeit his right to do business in the Commonwealth until he made restitution to customers and paid civil penalties and costs, was improper.

In support of his position, Hasan relies on cases which discuss the criteria for “modifying” an injunction. Ladner v. Siegel, 298 Pa. 487, 148 A. 699 (1930); Borough of Trappe v. Longaker, 430 A.2d 713 (Pa. Cmwlth. 1981); Sobers v. Shannon Optical Co., Inc., 473 A.2d 1035 (Pa. Super. 1984); Finn v. Pasquini, 49 A.2d 858 (Pa. Super. 1946). In short, whenever a court renders a final injunction, it may be later modified if the circumstances and situation of the parties are shown to have so changed as to make it just and equitable to do so. For example, a court may modify an injunction where: (1) in the exercise of its discretion, the court believes that the “ends of justice” would be served by a modification; (2) the law, either common or statutory, has changed, e.g., where the act enjoined is no longer prohibited; or (3) there is a change in the controlling facts on which the injunction rested. Ladner.

Hasan claims that “the ends of justice would be served” if the injunction was modified to eliminate any references to the forfeiture of his right to do business in the Commonwealth.

This Court does not agree that the standard to “modify” a permanent injunction applies to this controversy. A petition to “modify” a permanent

injunction is appropriate when the factual or legal underpinnings of a permanent injunction have changed thereby rendering the decree no longer necessary. This was not the import of Hasan's Petition to Modify the Injunction because he did not allege either a change in the law or facts sufficient to render the original injunction unwarranted or unjust. Rather, Hasan challenged the legality of the underlying injunction itself, claiming that the common pleas court had no authority in the first instance to order forfeiture of his right to do business in Pennsylvania.⁸

Again, the purpose of the underlying injunction was to prohibit Hasan from engaging in any business in Pennsylvania until: (1) he made full restitution to consumers; and (2) paid the civil penalty, restitution, costs and attorney fees to the Commonwealth. Hasan contends that under Section 9 of the UTPCPL, 73 P.S. §201-9, a court may only order the forfeiture of the right to do business in the Commonwealth if there is a violation of an existing injunction issued under Section 4 of the UTPCPL, 73 P.S. §201-4. Hasan claims since he never violated a previous injunction, the common pleas court was not authorized to resort to the relief in Section 9 of the UTPCPL, 73 P.S. §201-9, and enjoin him from doing business in Pennsylvania.

Hasan's Motion to Modify the Injunction was nothing more than a belated attack on the underlying validity or propriety of the common pleas court's Final Decree which ordered the forfeiture. Hasan alleges that the common pleas court did not have the "authority" to issue the injunction in the first place. He does not claim that there were any "changes" after issuance of the injunction that

⁸ Although Hasan never raised it in his Answer and New Matter or at the Adjudication Hearing, he also argued in his Motion to Modify the Injunction that the Commonwealth had no right to seek the forfeiture pending payment of civil fines.

warrant modification or militate against its continuance. He may not characterize what should have been asserted previously in his defensive pleadings and/or in a post-trial motion as a “petition to modify” to avoid the consequence of waiver. The Final Decree issued on January 21, 2011, disposed of all issues. Hasan took no action until nine months later. Because Hasan failed to raise this issue before his Motion to Modify the Injunction, he waived his right to make this argument. See Commonwealth v. TAP Pharmaceutical Products, Inc., 36 A.3d 1197 (Pa. Cmwlth. 2011). Based on the circumstances presented here, this Court agrees with the Commonwealth that Hasan’s attack on the underlying validity of the injunction was untimely.

Hasan contends that the injunction violated his “due process rights” and is “hindering his ability to obtain employment.” Hasan’s Brief at 16.

This Court set forth its understanding of the elements of due process in Pittsburgh Press Employment Advertising Discrimination Appeal, 287 A.2d 161 (Pa. Cmwlth. 1972), *affirmed*, 413 U.S. 376 (1973), where it was stated:

The ingredients of due process have been discussed in a multitude of judicial opinions. A reading of many of these cases confirms our understanding that due process of law is afforded when (1) the ‘accused’ is informed with reasonable certainty of the nature of the accusation lodged against him, (2) he has timely notice and opportunity to answer these charges and to defend against attempted proof of such accusation, and (3) the proceedings are conducted in a fair and impartial manner.

Pittsburgh Press, 287 A.2d at 166.

This Court's review of the record enables the Court to conclude that all of these elements of due process have been met. Hasan was informed with reasonable certainty via the Amended Complaint of the nature of the Commonwealth's allegations and the relief sought. The Commonwealth specifically sought in its prayer for relief an order to enjoin Hasan from engaging in any business in Pennsylvania until: (1) he made full restitution to consumers; and (2) paid the civil penalty, restitution, costs and attorney fees to the Commonwealth. Hasan was represented by Pennsylvania counsel who preliminarily objected to the Complaint and filed an Answer and New Matter to the Amended Complaint. Further, the issue of enjoining Hasan from engaging in business in Pennsylvania was raised during the Adjudication hearing. Hasan had every opportunity to answer the charges and challenge the relief requested by the Commonwealth but he chose to ignore it instead.

The proceedings were conducted in a fair and impartial manner. Hasan basically stopped participating in the proceedings without explanation whatsoever. The Commonwealth, Hasan's counsel and common pleas court were forced to continue the proceedings without his input. Because of Hasan's inaction, the Commonwealth moved to compel discovery and for sanctions. Hasan was provided timely notice of that hearing and of all subsequent motions and hearings. His counsel appeared and described his unsuccessful efforts to contact Hasan. Counsel conceded that he was unable to offer any defense to the motion for sanctions. On that basis, the common pleas court issued the default judgment. Afterwards, the Commonwealth filed a motion to enter an Adjudication, again providing Hasan with timely notice. Hasan's counsel attended the hearing basically for the purpose of requesting permission to withdraw as counsel. The common pleas court issued the Adjudication which consisted of findings of fact

and conclusions of law. Hasan's unexplained unavailability and his choice not to take part in the proceedings eventually culminated in the Final Decree which is at issue on appeal.

Under these particular facts, this Court finds that Hasan was not denied due process and any alleged difficulty in obtaining employment in Pennsylvania is the direct result of his own failure to avail himself of the multiple opportunities he was given to participate and defend the serious charges against him. Moreover, to the extent that Hasan argues that he was denied "due process" because the common pleas court did not hold a hearing on his Motion to Modify the Injunction, it was apparent from the face of that motion that the relief requested was inappropriate and had been waived. There was no basis for a hearing.

II.

Issues pertaining to January 31, 2012 Order which Denied Hasan's Petition to Open and/or Strike

In his remaining issues, Hasan challenges the common pleas court's order which denied his Petition to Open and/or Strike the default judgment.⁹ Although Hasan characterized his Petition as one to "open and/or strike" the actual

⁹ A petition to strike a default judgment operates as a demurrer to the record and may be granted only for a fatal defect or irregularity on the face of the record. A court may only look at facts of record at the time the default judgment was entered to decide if the record supports the judgment. A petition to strike does not involve the discretion of the court. Triangle Printing Co. v. Image Quest, 730 A.2d 998, 999 (Pa. Super. 1999). On appeal, then, this Court exercises plenary review, considering the record as it existed when the default judgment was entered, and to determine whether the common pleas court's legal determination was correct.

A petition to open a default judgment is an appeal to the equitable powers of the court. The decision to grant or deny such petition is within the sound discretion of the common pleas court and will not be overturned on appeal absent a manifest abuse of discretion or error of law. Graziani v. Randolph, 856 A.2d 1212, 1223-1224 (Pa. Super. 2004).

issues advanced appear to raise “fatal defects” on the face of the record, which are appropriately raised in a petition to strike. Contin v. Shapiro, Eisenstat, 439 A.2d 122 (Pa. Super. 1981). He also appears, however, to argue throughout his Brief the elements necessary to “open” a judgment. This Court will address those arguments seriatim.

Petition to Strike – Fatal Defect on Face of Record

In his fourth issue, Hasan raises a procedural argument. He argues it was an error to deny his Petition to Strike without a hearing and opportunity to file legal briefs pursuant to Bucks County Local Rule of Civil Procedure (“Local Rule”) No. 208.3(b). He claims that the Commonwealth and Attorney General were the parties responsible to praecipe the matter for disposition under that Local Rule. He argues that because they allegedly failed to do that, he did not have the opportunity to file a brief.

Local Rule 208.3(b) clearly states that: “when the matter is at issue and ready for decision, the moving party on the application shall, by praecipe, order the same to be submitted for disposition...[t]he following shall accompany the praecipe and pleading being submitted for disposition: ...(ii) [a] brief or memorandum of law in support of each position taken with regard to the disposition of the matter.” (Emphasis added). Hasan was the party who filed the “Petition to Strike and or Open.” It was his responsibility, as the moving party, to advance his petition by filing the praecipe and brief so that it could be ruled upon.

In his fifth and sixth issues, Hasan argues it was error to deny his Petition to Strike because his Bankruptcy case filed on February 11, 2010, operated as a stay which prohibited the Commonwealth from commencing or continuing

any action to collect an alleged debt under 11 U.S.C. §362, and because the portion of the judgment for “consumer restitution” was discharged in Hasan’s Chapter 7 Bankruptcy.

This Court finds no legal defect on the face of the record which existed at the time the judgment was entered. First, the filing of a bankruptcy petition does not operate as a “stay” of the commencement or continuation of “an action or proceeding by a government to enforce such government unit’s police and regulatory power.” 11 U.S.C. §362(b)(4). See In re First Alliance Mortgage Co., 264 B.R. 634, 645-646 (C.D. Cal. 2001). The purpose of this exception “is to prevent the bankruptcy court from becoming a haven for wrongdoers.” CFTC v. Co Petro Mktg. Group, Inc., 700 F.2d 1279, 1283 (9th Cir.1983). The enforcement of consumer protection statutes is an exercise of government police or regulatory power. See In re Weller, 189 B.R. 467, 471 (Bankr. E.D. Wis. 1995). Therefore, the action brought pursuant to the consumer protection law falls within the exception to the automatic stay and may go forward against the debtor regardless of the stay. In re Nelson, 240 B.R. 802, 804-806 (Bankr. D. Me. 1999).

Further, at the time the judgment was entered on March 16, 2011, the state of the law in our Pennsylvania federal courts¹⁰ as to whether a state-court civil restitution award imposed against a Chapter 7 debtor for violation of the UTPCPL falls within the discharge exception for fines or penalties under 11 U.S.C. §523(a)(7) was, and remains, unsettled. Viewing the record at the time the default

¹⁰ Nondischargeability due to fraud is federal question. In re Davis, 115 B.R. 346. (N. D. Fla. 1990).

judgment was entered, this Court finds that the judgment against Hasan was valid and there was no basis to strike it.

In his seventh issue, Hasan argues that the judgment must be stricken as facially invalid because it provided for reimbursement of attorney's fees and costs which are not allowed under the UTPCPL. TAP Pharmaceutical. However, the judgment in this case was entered months before the Tap ruling. Furthermore, if the record is self-sustaining the judgment will not be stricken. Township of Middletown v. Fried & Gerber, Inc., 454 A.2d 71, 72 (Pa. Super. 1982) (the alleged "excessiveness" of the amount of the judgment was not a "fatal defect" but rather it was in the nature of a defense which does not address itself to the face of the record). Here, the amount of the award was exactly the amount requested in the amended complaint upon which Hasan defaulted. There was no fatal defect on the face of the record which would warrant invalidation of the default judgment.

In his eighth issue, Hasan argues that the common pleas court erred when it denied his Petition to Strike because the Commonwealth's action was filed after the expiration of the two-year statute of limitations. Hasan alleges that the Commonwealth was limited to seeking penalties for a period of two years before the date of the commencement of the action on August 27, 2006. He further argues that he filed a "Withdrawal Certificate" from business in Pennsylvania effective December 31, 2005. Therefore, it was impossible that any representations were made to consumers after that date.

The UTPCPL is governed by a six-year statute of limitations. Keller v. Volkswagen of America Inc., 733 A.2d 642, 646 n.9 (Pa. Super. 1999); Gabriel v. O'Hara, 534 A.2d 488 (Pa. Super. 1987). Furthermore, there was no fatal defect

on the face of the record at the time of judgment which supports Hasan's argument that the Commonwealth's complaint was time-barred. Hasan introduces, after-the-fact, a Withdrawal Clearance Certificate (which documents the date he withdrew from doing business in Pennsylvania) issued to Pro Guard by the Pennsylvania Department of Revenue dated December 31, 2005. He claims this proves that nothing relevant could have happened during the applicable limitations period. However, even if this document supports Hasan's position it was not part of the record before the common pleas court. It, therefore, did not support Hasan's motion to strike.

In his ninth issue, Hasan argues that the common pleas court erred when it denied his Petition to Open and/or Strike without first providing him with a hearing and opportunity for discovery.

No hearing is required before a decision on a Petition to Open and/or Strike. Fierst v. Commonwealth Land Title Ins. Co., 535 A.2d 196 (Pa. Super. 1987). As for Hasan's right to discovery, that issue was disposed of in the common pleas court's October 11, 2011, order which granted the Commonwealth's Motion for Protective Order. Hasan did not mention that order in his Statement of Issues on Appeal so he waived the issue.

Accordingly, based on this Court's assessment, the common pleas court did not err when it refused to strike the judgment.

Petition to Open

To the extent Hasan argues, in the alternative, that the judgment should have been “opened” this Court finds that the common pleas court’s refusal to open the judgment against Hasan was well within its discretion.

In order to grant a petition to open, the movant must show: (1) the petition was promptly filed; (2) there was a reasonable excuse or explanation for the inaction which resulted in the default; and (3) the movant has meritorious defense to the claims in the underlying complaint. McFarland v. White, 518 Pa. 496, 544 A.2d 929 (1988).

Hasan argues that his motion was “prompt” because the judgment was formally entered against him on March 16, 2011, and his petition to open was filed on April 14, 2011. This Court does not agree he acted promptly. The default judgment was entered against him as a discovery sanction entered one full year earlier, on March 12, 2010, and he did absolutely nothing in response. If he believed the sanction was too severe, he could have moved for reconsideration or appealed. He also remained passive after the Commonwealth filed its motion to enter a formal adjudication against him.

Nor has Hasan offered a reasonable explanation for the conduct that led to the initial default judgment or for the lack of action which resulted in the subsequent Adjudication and money judgment. Hasan to this date has not explained why he failed to respond to the discovery requests, the motions to compel and the orders granting the motions to compel. Hasan attempts to convince this Court that he was not given “notice” of the scheduled events or hearings. However, there is nothing in the record to support his contention. As discussed

earlier, Hasan was represented by counsel at all times. His attorney of record received appropriate notice of all proceedings and was present during both the sanctions hearing and the hearing regarding the Commonwealth's request for adjudication.

In an effort to satisfy the "meritorious defense" requirement, Hasan asserts the same legal defenses he advanced in support of his motion to strike, i.e., lack of personal jurisdiction, pending bankruptcy, statute of limitations and grant of relief beyond what the UTPCPL permits. These defenses, with the exceptions of personal jurisdiction, were rejected for the reasons explained more fully above.

With regard to Hasan's argument that the common pleas court lacked personal jurisdiction because he only had extremely limited contacts with this state in his role as officer of the corporation registered to do business here, this Court finds that this argument lacks merit. Although Hasan was a citizen of California, he was subject to the UTPCPL because the record reflects that he controlled Pro-Guard at all times, he ran the day-to-day operations, and was the sole owner and President of Pro-Guard. He supervised, controlled, approved, authorized, ratified and benefitted from the conduct in Pennsylvania which violated the UTPCPL. He handled consumer issues and complaints including those related to consumers residing in Pennsylvania, and was in direct contact with Pennsylvania car dealerships in Pennsylvania and Pennsylvania residents from Morrisville, Philadelphia, Langhorne and Slatington.

In sum, Hasan failed to meet any of the prongs of the criteria necessary to open a judgment.

The orders of the common pleas court are affirmed.

BERNARD L. McGINLEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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Thomas W. Corbett, Jr.	:	
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ORDER

AND NOW, this 2nd day of May, 2013, the orders entered by the Court of Common Pleas Court of Bucks County in the above-captioned matter are hereby affirmed.

BERNARD L. MCGINLEY, Judge