

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO, ex rel.)	CASE NO. 13CV000440
ATTORNEY GENERAL)	
MICHAEL DEWINE)	JUDGE FRYE
)	
PLAINTIFF,)	
)	<u>FINAL JUDGMENT</u>
v.)	<u>ENTRY AND ORDER</u>
)	
GEORGE ELLISH JR, et al.)	
)	
DEFENDANTS.)	

RECEIVED
ATTORNEY GENERAL OF OHIO

AUG 21 2013

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

The Plaintiff commenced this action on January 11, 2013 by filing its Complaint and Request for Declaratory Judgment, Injunctive Relief, Consumer Restitution, and Civil Penalties against Defendants George Ellish Jr. and IX Creations. The Complaint alleged violations of the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq. and its Substantive Rules, OAC 109:4-3-01 et seq. Service was perfected on Defendant IX Creations on January 15, 2013 and Defendant Ellish on January 29, 2013, respectively. Defendants failed to answer.

Plaintiff filed a Motion for Default Judgment on March 8, 2013. This Court issued a Default Judgment Entry and Order against the Defendants on April 1, 2013. The Default Judgment included an order for the Defendants to pay civil penalties and restitution to all consumers injured by the Defendants' conduct, in amounts to be determined at a later date via affidavits.

On May 6, 2013, Plaintiff filed a Memorandum in Support of Damages and Other Requested Relief ("Damages Memo"), in which Plaintiff submitted evidence supporting the amount of civil penalties and consumer damages that Plaintiff was requesting. The damages hearing was first scheduled before the Court on May 7, 2013. At this hearing, Defendant Ellish

made his first appearance in this matter. The Court granted Defendant Ellish's request for a continuance in order to obtain counsel. In the Court's Order of Reference and Notice of Hearing, the Court instructed Defendant Ellish that once he obtained counsel, he should have his counsel enter a formal appearance in this matter and contact counsel for the State of Ohio. However, none of this occurred and Plaintiff never heard from the Defendant.

On June 6, 2013, Plaintiff filed a Memorandum in Support of Damages and Other Requested Relief. On June 6, 2013, Plaintiff's counsel appeared before Magistrate Harildstad and presented evidence to support the Plaintiff's request for consumer damages and civil penalties. Magistrate Harildstad found that Plaintiff was entitled to Twenty Six Thousand Six Hundred and Fifty Two Dollars and Fourteen Cents (\$26,652.14) in consumer restitution and Twenty Five Thousand Dollars (\$25,000.00) in civil penalties, and set forth the following findings of fact and conclusions of law which the court hereby adopts.

FINDING OF FACTS

1. Defendant, George Ellish Jr. (hereafter Defendant Ellish), is an individual who is last known to have operated his business at 5300 Trabue Road, Columbus, OH 43228.
2. Defendant Ellish registered Defendant IX Creations as a domestic limited liability company on September 2, 2009.
3. Defendant Ellish directed, supervised, approved, formulated, authorized, ratified, benefited from and/or otherwise participated in the day to day activities of the business entity known as Defendant IX Creations.
4. Defendant Ellish operated, dominated, controlled, and directed the business activities of Defendant IX Creations, causing, personally participating in, and/or ratifying the acts and practices of Defendant IX Creations as described in this Complaint.

5. Defendants, at all times relevant to this action, engaged in the selling of consumer goods or services, specifically home improvement repairs or services.
6. Defendants contracted to provide home improvement repairs or services to consumers in their residential homes.
7. At the time of the transactions, Defendants met at the consumers' homes to provide an estimate for the repairs or services needed in consumers' residential homes.
8. At the time of the transactions, or prior to any work being completed, Defendants failed to provide consumers with a written form which included language explaining the consumer's right to a written estimate.
9. At the time of the transactions, or prior to any work being completed, Defendants failed to provide consumers with a written form that indicated the reasonably anticipated completion date.
10. At the time of the transaction, or prior to any work being completed, Defendants failed to provide consumers with a list of the parts or materials, the amount charged for labor, and the identity of individuals performing the repair or service.
11. Defendants accepted down payments from consumers for the purchase of services, and then failed to deliver the services for which the consumers paid.
12. After the Defendants accepted down payments and failed to deliver services, Defendants failed to refund the down payments to consumers.
13. When the Defendants performed work for consumers, the work was performed in an incomplete, shoddy, or unworkmanlike manner.

CONCLUSIONS OF LAW

1. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
2. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3), in that some of the transactions complained of herein, and out of which this action arose, occurred in Franklin County in the State of Ohio.
3. Defendants are “suppliers” as that term is defined in R.C. 1345.01(C) as Defendants were, at all times relevant herein, engaged in the business of effecting or soliciting “consumer transactions” as that term is defined in R.C. 1345.01(A).
4. Defendants, at all times relevant to this action, engaged in the business of effecting consumer transactions by soliciting, contracting, and providing home improvement repairs or services to consumers in their residential homes in Franklin County and other counties in the State of Ohio and in other states, for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).
5. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and the Failure to Deliver Rule, Ohio Admin. Code 109:4-3-09(A)(2) by accepting down payments from consumers for consumer goods and services, and failing to deliver the goods and services purchased or to return the down payments to consumers.
6. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) by performing home repair or improvement services in an incomplete, shoddy, or unworkmanlike manner.
7. Defendants have committed unfair or deceptive acts or practices in violation of R.C.

1345.02(A) and Ohio Adm. Code 109:4-3-05(A) by failing to provide the consumer with a written estimate choice language form at the time of the initial face to face contact or prior to the commencement of any repair or service, and by failing to provide the consumer with a form that indicated the reasonably anticipated completion date.

8. Defendants have committed unfair and deceptive acts or practices in violation of R.C. 1345.02(A) and Ohio Adm. Code 109:4-3-05(D) by failing to provide the consumers with a list of parts or materials, the amount charged for labor, and the identity of the individuals performing the repair or service.

THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED THAT:

- A. Plaintiff's request for Declaratory Judgment is GRANTED, and it is therefore DECLARED that the acts and practices set forth above violate the CSPA, R.C. 1345.01 et seq. in the manner set forth therein.
- B. Defendants, under their own name or any other name, their agents, representatives, salespeople, employees, successors and assigns, and all persons acting on behalf of Defendants directly or indirectly, through any corporate or private device, partnership or association, are PERMANENTLY ENJOINED from engaging in the acts or practices of which Plaintiff complains and from further violating the CSPA, R.C. 1345.01 et seq.
- C. Defendants are PERMANENTLY ENJOINED from engaging in business in the State of Ohio as a supplier until all judgment ordered remuneration is paid, including any outstanding unsatisfied judgment arising out of a prior consumer transaction.
- D. Defendants are ORDERED to maintain in their possession and control for a period of five (5) years all business records relating to Defendants' solicitation or effectuation of business in Ohio and to permit the Ohio Attorney General or his representative, upon

reasonable, twenty-four (24) hour notice, to inspect and/or copy any and all of said records, however stored, and further are ORDERED that copies of such records be provided at Defendants' expense to the Ohio Attorney General upon request of the Ohio Attorney General or his representatives;

- E. Defendants are ORDERED to pay consumer damages to the Ohio Attorney General in the total amount of Twenty Six Thousand Six Hundred and Fifty Two Dollars and Fourteen Cents (\$26,652.14) to be distributed by the Attorney General to consumers identified on the attached Addendum A, in the amounts specified on Addendum A.
- F. Pursuant to the above finding that Defendants committed unfair and deceptive acts and practices in violation of the CSPA, Defendants are ORDERED to pay a civil penalty to the Ohio Attorney General in the amount of Twenty Five Thousand Dollars (\$25,000.00).
- G. Defendants are ORDERED to pay all court costs.

IT IS SO ORDERED.

DATE

JUDGE FRYE

Prepared by:

MICHAEL DEWINE
Attorney General of Ohio

/s/ Kate Christobek
KATE E. CHRISTOBEK (0088746)
Assistant Attorney General
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215
(614) 466-3493 (telephone)
(877) 629-2622 (facsimile)
Kate.Christobek@ohioattorneygeneral.gov
Counsel for Plaintiff

To Franklin County Clerk of Court:

Please serve signed copies of the FINAL JUDGMENT ENTRY AND ORDER to:

Kate Christobek
Assistant Attorney General
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215

George Ellish Jr.
5300 Trabue Road
Columbus, OH 43228

IX Creations
c/o Alex Hastie
1192 Grandview Ave
Grandview Heights, OH 43212

ADDENDUM A

	NAME	RESTITUTION
1	Kelly Baki	\$19,829.00
2	Debrah Hughes	\$447.14
3	Donald Kelly	\$2526.00
4	Paula Ohira	\$3850.00
	Total:	\$26,652.14

Franklin County Court of Common Pleas

Date: 08-19-2013
Case Title: OHIO STATE ATTORNEY GENERAL MICHAEL DEWI -VS-
GEORGE ELLISH JR ET AL
Case Number: 13CV000440
Type: JUDGMENT ENTRY

It Is So Ordered.

The image shows a handwritten signature in cursive script, which appears to read "Richard A. Frye". The signature is written over a circular official seal. The seal contains the text "CLERK OF COURTS" at the top and "FRANKLIN COUNTY OHIO" at the bottom, with a central emblem.

/s/ Judge Richard A. Frye