

IN THE FRANKLIN COUNTY COURT OF COMMON PLEAS
CIVIL DIVISION

OHIO STATE ATTORNEY GENERAL, :

Plaintiff, : Case No. 14CVH-06-6342

vs. : JUDGE HOLBROOK

GIVITON LLC, : MAGISTRATE WATTERS **RECEIVED**
Defendant. : ATTORNEY GENERAL OF OHIO

JAN 07 2015

JUDGMENT ENTRY
AND
NOTICE OF FINAL, APPEALABLE ORDER CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

The Plaintiff commenced this action on June 18, 2014 by filing its Complaint and Request for a Declaratory Judgment, Injunctive Relief, Consumer Restitution, and Civil Penalties against Defendant Giviton, LLC. The Complaint alleged violations of the Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq. and its Substantive Rules, Ohio Administrative Code ("O.A.C.") 109:4-3-01 et seq. Service was perfected on Defendant Giviton LLC on June 20, 2014.

Plaintiff filed a Motion for Default Judgment, and this Court issued a Default Judgment Entry and Order against Defendant on October 22, 2014. The Default Judgment included declaratory and injunctive relief and provided that civil penalties and consumer restitution would be determined at a subsequent hearing.

On December 10, 2014, 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 requested by Plaintiff. Attached to the Damages Memo were twenty-two (22) consumer affidavits, which attested to the damages suffered by consumers based on Defendant's conduct. The

evidence established that the consumers sustained monetary damages in connection with the Defendant's soliciting and selling of vouchers on its website.

A Damages Hearing was held before this Court on December 12, 2014. The Damages Memo, including its attached affidavits and exhibits, was admitted into the evidentiary record of the damages hearing by the Magistrate. The Magistrate issued a Decision on Damages on December 12, 2014. The Court adopts the Findings of Facts, Conclusions of Law and Decision on Damages of the Magistrate in full and they are hereby incorporated by reference. Based on the Magistrate's Decision, the Court finds that consumers sustained damages in the amount of One Thousand Eight Hundred Nineteen Dollars and Eighty-Five Cents (\$1,819.85).

In its Damages Memo, Plaintiff also requested civil penalties pursuant to the CSPA, R.C. 1345.07(D). Plaintiff provided evidence of the Defendant's violations of the CSPA, which pursuant to R.C. 1345.07(D), permit the imposition of a civil penalty. The Court adopts the Magistrate's finding and conclusion that Plaintiff's request for a civil penalty in the amount of Five Thousand Dollars (\$5,000.00) is well-taken.

Based on the above, the Court re-states its prior Findings of Facts, Conclusions of Law and Orders, in their entirety, which were included in the Court's Default Judgment Entry and Order filed on October 22, 2014. The Court also issues new orders based on the evidence presented via the Plaintiff's Damages Memo and at the Damages Hearing, and the Magistrate's Decision filed on December 12, 2014.

FINDINGS OF FACT

1. The actions of Defendant occurred in Franklin County and other counties in Ohio.

2. Defendant Giviton LLC ("Giviton") is a limited liability company with a principal place of business located at 2825 Jeanne Court, Lewis Center, Ohio 43035 and a statutory agent, Internet Statutory Agent, Inc., located at 8824 Commerce Loop Drive, Columbus, Ohio.
3. At all times relevant to this action, Defendant Giviton has engaged in the selling of consumer goods or services, specifically vouchers, for local businesses to consumers.
4. Defendant Giviton operated and sold vouchers for local businesses on its website, www.giviton.com.
5. Defendant Giviton entered into transactions with consumers on its website by allowing consumers to select and make full payments for vouchers for local businesses.
6. Once consumers provided payments to Defendant Giviton for vouchers, which were accessible on www.giviton.com.
7. In some instances, consumers paid in full for vouchers, but could not access them on www.giviton.com.
8. In some instances, consumers could not have their vouchers honored by the local businesses because of disputes between Defendant Giviton and the local businesses.
9. Many consumers requested a refund from Defendant Giviton.
10. Defendant Giviton often promised to provide refunds, but failed to actually refund the consumers.

CONCLUSIONS OF LAW

11. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.

12. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(2) in that Franklin County is the location in which Defendant Giviton had its principal place of business, as well as Ohio Civ. R. 3(B)(3) in that Franklin County is the location where Defendant Giviton conducted activity that gave rise to the claims for relief.
13. The State of Ohio ex. rel. Michael DeWine, Attorney General of Ohio, is the proper party to commence these proceedings under the authority provided to him under the CSPA, R.C. 1345.07.
14. Defendant is a "supplier" as the term is defined in the CSPA, R.C. 1345.01(C), as Defendant, at all times relevant herein, engaged in the business of effecting consumer transactions by soliciting and providing services to individuals for purposes that were primarily for personal, family, or household use, within the meaning specified in R.C. 1345.01(A) and (D).
15. Defendant committed unfair and deceptive acts and practices in violation of R.C. 1345.02 of the CSPA and the Failure to Deliver Rule, O.A.C 109:4-3-09(A)(2), by accepting money from consumers for goods, specifically vouchers, and permitting eight weeks to elapse without delivering the promised goods or making a full refund.

THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED THAT:

- A. Plaintiff State of Ohio ex. rel. Michael DeWine, Attorney General of Ohio's request for Declaratory Judgment is GRANTED. It is therefore DECLARED that Defendant Giviton LLC's acts and practices set forth above violate the CSPA, R.C. 1345.01 et seq. and the O.A.C. 109:4-3-01 et seq., in the manner set forth herein.
- B. Defendant Giviton LLC, under its own name or any other name, its agents, representatives, salespeople, employees, successors, and assigns, and all

persons acting on behalf of Defendant, directly or indirectly, through any corporate or private device, partnership or association, is PERMANENTLY ENJOINED from engaging in the acts or practices of which Plaintiff State of Ohio ex. rel. Michael DeWine, Attorney General of Ohio, complains and from further violating the CSPA, R.C. 1345.01 et seq. and the O.A.C. 109:4-3-01 et seq.

C. Defendant Giviton LLC is 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 judgments arising out of a prior consumer transaction.

D. Defendant Giviton LLC is ORDERED to pay One Thousand Eight Hundred Nineteen Dollars and Eighty-Five Cents (\$1,819.85) in consumer restitution via damages awarded to Plaintiff State of Ohio ex rel. Michael DeWine, Attorney General of Ohio, to be distributed as follows:

Michelle Amrine	\$40.00
Shawn Carty	\$258.00
Erica Clay	\$60.00
Sandy Corica	\$73.75
Laticia Drew	\$200.00
Patti Gilligan	\$20.00
Christine How	\$10.00
Angela Im	\$350.10
Mike Kabler	\$89.00
Donica Key	\$105.00
Melissa Lehman	\$10.00
Gaylyne Marshall	\$39.00
Rebecca Maykowski	\$40.00
Kimberly Pavkovich	\$22.00
Elizabeth Planck	\$75.00
Drake Ross	\$30.00
Diane Ruck	\$60.00
Loretta Schmidt	\$200.00
Cathy Shaw	\$29.00
Lucinda Vogtsberger	\$10.00

Marie Williams	\$60.00
Tricia Winland	\$39.00

- E. Pursuant to the above finding that Defendant committed unfair and deceptive acts and practices in violation of the CSPA, Defendant is ORDERED to pay a civil penalty to the Plaintiff State of Ohio ex rel. Michael DeWine Attorney General of Ohio in the amount of Five Thousand Dollars (\$5,000.00). Plaintiff State of Ohio ex rel. Michael DeWine Attorney General of Ohio shall comply with the requirements of R.C. 1345.07(G) with regard to the distribution of said civil penalty as follows: one-fourth of the amount to the Franklin County Treasurer and three-fourths to the consumer protection enforcement fund created by R.C. 1345.51.
- F. Defendant is ORDERED to pay all court costs. Based upon the lack of evidence presented to the Court and the Magistrate's December 12, 2014 Decision, Plaintiff State of Ohio ex rel. Michael DeWine Attorney General of Ohio is not entitled to an award of its costs in bringing this action, including attorney's fees and interest.

THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY in entering judgment herein. **THIS IS A FINAL APPEALABLE ORDER.** Pursuant to Civil Rule 58, the Clerk of Court shall serve upon all parties notice of this Judgment and its date of entry.

IT IS SO ORDERED.

Copies To:

Brittany M. Steele, Esq., AAG
Assistant Attorney General
Consumer Protection Section
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215
Counsel for Plaintiff

Giviton, LLC
c/o Internet Statutory Agent
8424 Commerce Loop Drive
Columbus, Ohio 43240
Defendant *pro se*

Franklin County Court of Common Pleas

Date: 12-15-2014
Case Title: OHIO STATE ATTORNEY GENERAL MICHAEL DEWI -VS-
GIVITON LLC
Case Number: 14CV006342
Type: JUDGMENT ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "Michael J. Holbrook", is written over a circular official seal. The seal contains the text "FRANKLIN COUNTY OHIO" and "CLERK OF COURTS".

/s/ Judge Michael J. Holbrook