

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO, ex rel.)	CASE NO. 2014 CV 005863
ATTORNEY GENERAL)	
MICHAEL DEWINE)	JUDGE KIMBERLY COCROFT
)	MAGISTRATE LIPPE
PLAINTIFF,)	
)	
v.)	<u>FINAL JUDGMENT</u>
)	<u>ENTRY AND ORDER</u>
PEAK RESTORATION, LLC, et al.)	
)	
DEFENDANTS.)	

The Plaintiff commenced this action on June 05, 2014 by filing its Complaint and Request for a Declaratory Judgment, Injunctive Relief, Consumer Restitution, and Civil Penalties against Defendants Peak Restoration, LLC and Adam Drzewiecki. The Complaint alleged violations of the Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq., its Substantive Rules, Ohio Administrative Code ("O.A.C.") 109:4-3-01 et seq., and the Home Solicitation Sales Act ("HSSA"), R.C. 1345.01 et seq. Service was perfected on Defendant Peak Restoration, LLC on June 11, 2014 and on Defendant Adam Drzewiecki on August 13, 2014.

Plaintiff filed a Motion for Default Judgment, and this Court issued a Default Judgment Entry and Order against Defendants on September 30, 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 November 17, 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 that Plaintiff requested.

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ATTORNEY GENERAL OF OHIO

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CONSUMER PROTECTION SECTION
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In support of its request for consumer damages, Plaintiff attached to its Damages Memo the affidavits of nine (9) consumers, which attested to the damages suffered. Plaintiff requested consumer damages pursuant to the CSPA, R.C. 1345.07(B). The evidence established that the consumers sustained monetary damages in connection with the Defendants' soliciting and selling of their home improvement services.

The Court finds that the consumers sustained damages in in the amount of Forty Nine Thousand, Three Hundred Ninety Five Dollars and Ninety Nine Cents (\$49,395.99).

In its Damages Memo, Plaintiff also explained the basis for the amount of civil penalties requested. Plaintiff's request was made pursuant to the CSPA, R.C. 1345.07(D). Plaintiff provided evidence of the Defendants' violations of the CSPA, which pursuant to R.C. 1345.07(D), permit the imposition of a civil penalty. The Court finds Plaintiff's request for a civil penalty in the amount of Twenty Thousand Dollars (\$20,000.00) well-taken.

Based on the above, the Court completely reinstates below the Findings of Facts, Conclusions of Law, and Orders that were originally included in the Court's Default Judgment, and also issues new orders based on the evidence presented via the Plaintiff's Damages Memo and at the Damages Hearing:

FINDINGS OF FACT

1. The actions of Defendants occurred in Franklin County and other counties in Ohio.
2. Defendants engaged in the business of providing home improvement services to consumers.
3. At all relevant times, Defendants have engaged in the business of advertising, soliciting, and selling home improvement services at consumers' homes in the State of Ohio, including Franklin County.

4. Defendants solicited consumers at their residences and encouraged the consumers to request money from their insurance companies to repair roofs, siding, and other exterior parts of the home.
5. At the time of the transactions, Defendants failed to provide consumers with a proper notice of cancellation form describing the consumers' rights to cancel the transactions.
6. Defendants accepted substantial down payments from consumers or directly from the consumers' insurance companies.
7. At the time of the transactions, Defendants failed to provide consumers with written notice notifying the consumers whether the deposits were refundable or under what conditions.
8. In most instances, Defendants accepted substantial payments from consumers but failed to even begin the work within eight weeks or provide a refund.
9. Consumers tried to contact the Defendants to begin or complete the work and/or to obtain a refund, but the Defendants habitually failed to return the consumers' phone calls.

CONCLUSIONS OF LAW

10. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
11. 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 the Defendant Peak Restoration, LLC had its principal place of business and Ohio Civ. R. 3 (B)(3) in that Franklin County is a location where the Defendants conducted activity that gave rise to the claim for relief.
12. The Ohio Attorney General is the proper party to commence these proceedings under the authority provided him under the CSPA, R.C. 1345.07.

13. Defendants are “suppliers” as the term is defined in the CSPA, R.C. 1345.01(C), as Defendants were, 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).
14. Defendants committed unfair and deceptive acts and practices in violation of R.C. 1345.02 and Ohio Adm. Code 109:4-3-09(A)(2) by accepting money from consumers for home improvement services and permitting eight weeks to elapse without delivering the contracted services or making a full refund.
15. Defendants violated the Home Solicitation Sales Act, R.C. 1345.23 and R.C. 1345.02(A), by failing to give a proper notice to consumers of their right to cancel their contract by a specific date.

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., the O.A.C. 109:4-3-01 et seq., and the HSSA, R.C. 1345.21 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., the O.A.C. 109:4-3-01 et seq., and the HSSA, R.C. 1345.21 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 judgments arising out of a prior consumer transaction.
- D. Defendants are ORDERED to jointly and severally pay consumer damages to the Ohio Attorney General in the total amount of Forty Nine Thousand, Three Hundred Ninety Five Dollars and Ninety Nine Cents (\$49,395.99) to be distributed by the Attorney General to the consumers identified in Exhibit 1 to Plaintiff's Damages Memo.
- E. Pursuant to the above finding that Defendants committed unfair and deceptive acts and practices in violation of the CSPA, Defendants are ORDERED to jointly and severally pay a civil penalty to the Ohio Attorney General in the amount of Twenty Thousand Dollars (\$20,000.00).
- F. Defendants are ORDERED to pay court costs.

IT IS SO ORDERED.

DATE

JUDGE COCROFT

Prepared by:

MICHAEL DEWINE
ATTORNEY GENERAL

/s/ Brittany M. Steele
Brittany M. Steele (0089188)
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To Franklin County Clerk of Court:

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

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

Peak Restoration, LLC
United States Corporation Agents, Inc.
Statutory Agent
3250 West Market Street, Suite 205
Fairlawn, Ohio 44333

Adam Drzewiecki
1006 Fortkort Drive
Reynoldsburg, Ohio 43068

Franklin County Court of Common Pleas

Date: 12-08-2014
Case Title: OHIO STATE EX REL MICHAEL DEWINE -VS- PEAK
RESTORATION LLC ET AL
Case Number: 14CV005863
Type: JUDGMENT ENTRY

It Is So Ordered.

A handwritten signature in black ink is written over a circular, embossed court seal. The signature is stylized and appears to be 'K. Cocroft'. The seal is partially obscured by the signature.

/s/ Judge Kimberly Cocroft