

IN THE COURT OF COMMON PLEAS
RICHLAND COUNTY, OHIO

RICHLAND COUNTY
CLERK OF COURTS
FILED

2016 AUG 25 P 2:50

STATE OF OHIO ex rel.
OHIO ATTORNEY GENERAL
MICHAEL DEWINE

Plaintiff

v.

JAMES McCLANAHAN, individually
and dba JM CONSTRUCTION
HOME IMPROVEMENT

Defendant.

CASE NO. 16 CV 553

JUDGE JAMES DEWEESE

FINAL JUDGMENT
ENTRY AND ORDER

Journalized on the court's
docket on 8-26-16

[Signature]
Deputy Clerk

The Plaintiff, State of Ohio, commenced this action on May 31, 2016 by filing its Complaint and Request for Declaratory Judgment, Injunctive Relief, Consumer Restitution, and Civil Penalties against Defendant John McClanahan dba JM Construction Home Improvement. The Complaint alleged violations of the Consumer Sales Practices Act ("CSPA"), R.C. 1345.41 et seq. The Defendant was served on June 7, 2016 and failed to respond within the twenty-eight days allotted under the rules. Defendant has also failed to make any appearance in this action.

Plaintiff filed a Motion for Default Judgment on July 13, 2016. On July 22, 2015, the Court issued an Order Granting Plaintiff's Motion for Default Judgment and set a date for the damages hearing. The damages hearing was held before the Court on August 17, 2016 at 10:00 a.m. Plaintiff's counsel appeared before the Court and presented evidence to support the Plaintiff's request for consumer restitution and civil penalties. Neither the Defendant nor counsel on their behalf appeared.

RECEIVED
ATTORNEY GENERAL OF OHIO

AUG 31 2016

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

In support of Plaintiff's request for consumer restitution, Plaintiff elicited the live testimony of two consumers who sustained monetary damages in connection with the Defendant's construction business. The first consumer, John Devore, testified that he paid the Defendant \$4,000 as a deposit on a new garage. Defendant never performed the work and failed to refund the consumer's deposit. The second consumer, Stephen Sensmeier, testified that he paid the Defendant \$4,050 for home remodeling work. Defendant failed to complete the work and failed to refund the consumer's money. The Court finds that John Devore sustained damages in the amount of \$4,000 and that Stephen Sensmeier sustained damages in the amount of \$4,050.

In addition to consumer restitution, Plaintiff also requested the Court impose a \$10,000 civil penalty on the Defendant. Plaintiff's request was made pursuant to R.C. 1345.07(D), which allows the Court to impose up to \$25,000 in civil penalties upon the Defendant for each distinct violation of the CSPA. The Court finds the Plaintiff's request well-taken.

Based on the above, the Court renders the following FINAL JUDGMENT ENTRY AND ORDER against the Defendant.

FINDINGS OF FACT

1. Defendant James McClanahan is a natural person who is currently residing at 2282 Lake Galion Rd. East, Galion, Ohio 44833.
2. Defendant James McClanahan ("Defendant") directed and controlled all business activities of JM Construction Home Improvement ("JM Construction"), a business located at 2282 Lake Galion Rd. East, Galion, Ohio 44833.
3. JM Construction is not registered with the Ohio Secretary of State.

4. Defendant accepted payment from consumers for the purchase of home improvement goods and services, and failed to deliver those goods and services within eight weeks.
5. On at least one occasion, Defendant began to provide contracted services after receiving initial payment from the consumer, but failed to complete the work.
6. On at least one occasion, Defendant performed shoddy and substandard home repair work, and then failed to correct such work.
7. After accepting consumers' payments and failing to deliver the services, Defendant failed to refund consumers' payments or deposits.

CONCLUSIONS OF LAW

8. The actions of Defendant have occurred in Richland County and other counties in the State of Ohio, and are in violation of the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq. and its Substantive Rules.
9. The Attorney General, acting on behalf of the State of Ohio and in the public interest, is the proper party to this action by virtue of the authority vested in the Attorney General by R.C. 1345.07 of the CSPA.
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)(3) in that some of the transactions complained of herein, and out of which this action arose, occurred in Richland County, Ohio.
12. Defendant is a "supplier" as that term is defined in R.C. 1345.01(C) as Defendant was, at all times relevant herein, engaged in the business of effecting consumer transactions either directly or indirectly by soliciting and selling goods or services to consumers in

Richland County and other counties in Ohio for purposes that were primarily for personal, family, or household use within the meaning specified in R.C. 1345.01(A) and (D).

13. Defendant committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and the Ohio Admin. Code 109:4-3-09(A), by accepting payments from consumers, failing to deliver the goods or services, and failing to return payments to the consumers.
14. Defendant committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by performing home improvement services in an incomplete, shoddy, or substandard manner, and then failing to correct or complete such work.
15. Defendant committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by failing to register or report his use of a fictitious business name to the Ohio Secretary of State as required by R.C. 1329.

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 in the manner described herein.
- B. Defendant, his agents, servants, employees, successors or assigns, and all persons acting in concert and participation with him, directly or indirectly, through any corporate device, partnership, or other association, under these or any other names, are **PERMANENTLY ENJOINED** from engaging in the acts and practices of which Plaintiff complains and from further violating the CSPA, R.C. 1345.01 et seq.

- C. Defendant is **ORDERED** to pay consumer restitution in the amount of \$8,050 to John Devore and Stephen Sensmeier, both of whom were injured by the Defendant's conduct as set forth herein. Such payment shall be made to the Attorney General via certified check or money order payable to the "Ohio Attorney General" and delivered to:

Ashley Miller
Consumer Protection Section
Office of the Ohio Attorney General
30 East Broad Street, 14th Floor
Columbus, Ohio 43215

The consumer damages will be distributed by the Attorney General to the following consumers in the amounts set forth below:

Last Name	First Name	City	State	Amount
Devore	John	Collins	Ohio	\$4,000
Sensmeier	Stephen	Mansfield	Ohio	\$4,050

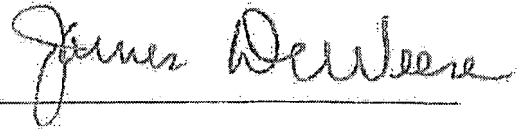
- D. Based on the above findings that Defendant committed unfair and deceptive acts and practices in violation of the CSPA, Defendant is **ORDERED** to pay a civil penalty in the amount of \$10,000, pursuant to R.C. 1345.07(D). Such payment shall be made to the Attorney General via a certified check or money order payable to the "Ohio Attorney General" and delivered to:

Ashley Miller
Consumer Protection Section
Office of the Ohio Attorney General
30 East Broad Street, 14th Floor
Columbus, Ohio 43215

- E. Defendant is **ENJOINED** from engaging in business as a supplier in any consumer transactions in the State of Ohio, until such time as he has satisfied all monetary obligations assessed at the damages hearing.
- F. Defendant is **ORDERED** to pay all court costs.

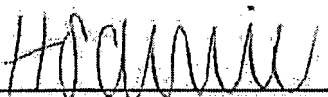
IT IS SO ORDERED.

DATE



JUDGE DEWEESE

Submitted by:



HALLIE C. SAFERIN (0093467)
Assistant Attorney General
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215
614-466-9529
Hallie.Saferin@ohioattorneygeneral.gov
Counsel for Plaintiff, State of Ohio

TO THE CLERK, PLEASE SERVE ON THE FOLLOWING:

James McClanahan
2282 Lake Galion Rd. East
Galion, Ohio 44833

Defendant