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LUCAS COUNTY

2016 SEP 29 AM 8:31

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IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

State of Ohio, ex rel. Michael DeWine
Ohio Attorney General

Plaintiff,

vs.

Joshua Schnabel,
d/b/a Schnabel Construction

Defendant.

) Case No. CI 0201501409

)
) Judge Dean Mandros

)
) **JUDGMENT ENTRY AND ORDER**

This cause came to be heard upon the Plaintiff's Motion for Default Judgment against Joshua Schnabel pursuant to Civ. R. 37(B)(2)(c). Plaintiff commenced this action with the filing of its Complaint on February 6, 2015 for violations of the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq., its Substantive Rules, and the Home Solicitation Sales Act ("HSSA"), R.C. 1345.21 et seq. Service was obtained on the Defendant on February 19, 2015 when the Lucas County Clerk mailed a copy of the complaint and summons by certified U.S. mail to the Defendant at the North Central Correctional Institution in Marion, Ohio.

Plaintiff served upon the Defendant interrogatories and requests for production of documents on June 15, 2015, to which Defendant has not responded. Despite repeated attempts by Plaintiff to obtain discovery, there was no response from Defendant. The Court granted Plaintiff's motion to compel on April 12, 2016 after the Court scheduled the matter for hearing

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on two separate occasions, neither of which Defendant appeared. More than fourteen days has passed and Defendant has failed to comply with this Court's order to produce the requested discovery. Accordingly, the Court finds Plaintiff's motion for default judgment to be well-taken and GRANTS same. The Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The actions of Defendant, hereinafter described, occurred in Lucas County, Ohio.
2. Defendant is a natural person whose last known personal address is 2103 Rivard Road, Toledo, Ohio 43615.
3. Defendant has been at all times relevant to this action engaged in the business of selling home improvement services in the State of Ohio, including in Lucas County.
4. Defendant sold home improvement services to consumers at a place other than the seller's place of business. These transactions took place at individual consumers' homes.
5. Defendant engaged in consumer transactions using the trade name Schnabel Construction, which was not registered with the Ohio Secretary of State.
6. Defendant performed residential home improvement services for consumers that included roofing, window installation, painting, caulking, chimney repair, and repair of an outdoor swing set.
7. Defendant performed home improvement services for consumers in a shoddy or unworkmanlike manner.
8. Defendant accepted substantial payments from consumers but failed to begin complete the work for which he was paid and failed to refund the payments.
9. At the time of the transactions, Defendant failed to provide consumers with proper notices of cancellation forms describing the consumers' rights to cancel the transactions.

CONCLUSIONS OF LAW

10. Jurisdiction is proper in this court pursuant to R.C. 1345.04.
11. This court has venue pursuant to Civ. R. 3(B)(3) in that some of the transactions complained of herein, and from which this action arose, occurred in Lucas County.
12. Defendant is a "supplier" as that term is defined in R.C. 1345.01(C), as Defendant was, at all times relevant to this action, engaged in the business of effecting consumer transactions by selling home improvement services to individuals in Ohio, including in Lucas County, for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).
13. Defendant is a "seller" as that term is defined in R.C. 1345.21(C) as Defendant, at all relevant times to this action, engaged in home solicitations of sales at a place other than the seller's place of business.
14. Defendant committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and O.A.C. 109:4-3-09 by accepting money from consumers for home improvement services and materials and permitting eight weeks to elapse without delivering the promised goods or services or issuing full refunds.
15. Defendant committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) by performing home improvement services in an incomplete, shoddy, or unworkmanlike manner.
16. Defendant committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1329.01 by failing to register with or report the trade name Schnabel Construction to the Ohio Secretary of State.

17. Defendant committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), and the HSSA, R.C. 1345.23(B), as set forth in R.C. 1345.28, by failing to include a proper Notice of Cancellation with the written agreement or offer to purchase.

ORDER

In its Motion, Plaintiff requested that consumer damages be awarded and a civil penalty be assessed against Defendant. After being duly advised on the matter, the Court finds Plaintiff's requests to be well-taken and hereby GRANTS same. Therefore, it is hereby ORDERED, ADJUDGED, and DECREED that:

18. The Plaintiff's request for a Declaratory Judgment that the types of acts and practices set forth above in the Conclusions of Law and Findings of Fact violate the CSPA, the O.A.C., and the HSSA is hereby GRANTED.

19. Defendant Joshua Schnabel, doing business as Schnabel Construction or any other names, his officers, partners, agents, servants, representatives, salespersons, employees, successors or assigns, and all persons acting in concert and participation with him directly or indirectly through any corporate device, partnership or association, in connection with any consumer transactions, is PERMANENTLY ENJOINED from engaging in any unfair or deceptive acts or practices that violate the CSPA, R.C. 1345.01 et seq., and the HSSA, R.C. 1345.21, et seq., including, without limitation, the conduct described in the Conclusions of Law paragraphs 14 – 17.

20. Pursuant to R.C. 1345.07(B), Defendant is ordered to pay consumer damages in the total amount of Eighteen Thousand, Two Hundred, Sixty-Four Dollars and Twenty-Six Cents (\$18,264.26). 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:

Compliance Officer
Consumer Protection Services
Office of the Ohio Attorney General
30 East Broad Street, 14th Floor
Columbus, Ohio 43215

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

Neil Bruss - \$1,697.00

Marilyn Kocevar - \$14,937.26

Roxane Chopp - \$234.00

Ellen Mount - \$1,396.00

21. Based on the above findings that Defendant committed unfair and deceptive acts and practices in violation of the CSPA and the HSSA, Defendant is ordered to pay civil penalties in the amount of Twenty-Five Thousand Dollars (\$25,000.00), 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:

Compliance Officer
Consumer Protection Services
Office of the Ohio Attorney General
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215

22. Defendant is ordered to pay all court costs.

Date

9-27-16

Judge

