

IN THE COURT OF COMMON PLEAS, DELAWARE COUNTY, OHIO

CLERK OF COURTS
DELAWARE COUNTY, OHIO
COMMON PLEAS COURT
FILED

2016 NOV 29 AM 8:13

STATE OF OHIO EX REL,

Plaintiff,

Case No. 16 CV H 01 0025

VS.

EVERETT H. KRUEGER, JUDGE

BIG TEN CONSTRUCTION LLC, et al.

RECEIVED
ATTORNEY GENERAL OF OHIO

Defendants.

FEB 01 2017

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

JUDGMENT ENTRY ADOPTING THE MAGISTRATE'S DECISION

The Court hereby adopts and approves the Magistrate's Decision and enters the Magistrate's Decision as a matter of record and includes the same as the Court's findings and judgments herein. The Court further finds that there is no error of law or other defect on the face of the Magistrate's decision and the Court incorporates, by reference, the Magistrate's decision and makes the same the judgment of this Court.

THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED THAT:

- A. A judgment by default is hereby entered in favor of Plaintiff and against Defendants, pursuant to Civ. R. 55.
- B. Plaintiff's request for Declaratory Judgment is GRANTED, and it is therefore DECLARED that the acts and practices set forth in the Magistrate's Decision violate the CSPA in the manner described therein.
- C. Defendants, under their own names or any other names, 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

TERMINATION CODE 12

the acts or practices of which Plaintiff complains and from further violating the CSPA, R.C. 1345.01 et seq.

- D. Defendants are jointly and severally ORDERED to pay consumer damages, to consumers identified in affidavits provided to the Court who were injured by the conduct of the Defendants as set forth herein in the amount of \$120,461.50. Payment shall be made to the Consumer Protection Section of the Office of the Ohio Attorney General for distribution to Consumers in the amounts set forth in State's Exhibit 2. Such payment shall be made by certified check or money order, payable to "Ohio Attorney General," and delivered to:

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

- E. Pursuant to the above finding that Defendants committed unfair and deceptive acts and practices in violation of the CSPA by violating the terms of their AVC, and pursuant to the terms of the AVC, Defendants are jointly and severally ORDERED to pay the previously suspended portion of the civil penalty to the Ohio Attorney General in the amount of \$13,000.00. Such payment shall be made by certified check or money order, payable to "Ohio Attorney General," and delivered to:

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

- F. Pursuant to the above finding that Defendants committed unfair and deceptive acts and practices in violation of the CSPA, Defendants are jointly and severally ORDERED to pay a civil penalty to the Ohio Attorney General in the amount of

\$50,000.00, pursuant to R.C. 1345.07(D). Such payment shall be made by certified check or money order, payable to "Ohio Attorney General," and delivered to:

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

G. Defendants are ENJOINED from engaging in business as suppliers in any consumer transactions in the State of Ohio, until such time as they have satisfied all monetary obligations due hereunder.

H. Defendants are ORDERED to pay court costs.

THIS IS A FINAL APPEALABLE ORDER. THERE IS NO JUST CAUSE FOR DELAY.

Dated: November 23, 2016


The Clerk is ordered to serve upon all parties not in default to appear, notice of the judgment and date of entry upon the journal within three days of journalization.


EVERETT H. KRUEGER, JUDGE

The Clerk of this Court is hereby Ordered to serve a copy of this Judgment Entry upon the following by

☒ Regular Mail, ☐ Mailbox at the Delaware County Courthouse, ☐ Facsimile Transmission

BRANDON C DUCK, 30 E. BROAD STREET 14TH FLOOR, COLUMBUS, OH 43215
ERIC TISCHER, 5090 BLACKSTONE EDGE DRIVE, NEW ALBANY, OHIO 43054
BIG TEN CONSTRUCTION, LLC, 5090 BLACKSTONE EDGE DRIVE, NEW ALBANY, OHIO 43054

This document sent to each attorney/party by:	
<input checked="" type="checkbox"/>	ordinary mail
<input type="checkbox"/>	fax
<input type="checkbox"/>	attorney mailbox
<input type="checkbox"/>	certified mail
Date: 11/29/16	By: 

IN THE COURT OF COMMON PLEAS
DELAWARE COUNTY, OHIO

2016 NOV 29 AM 8:13

STATE OF OHIO, *ex rel.*
MICHAEL DEWINE
ATTORNEY GENERAL OF OHIO

PLAINTIFF,

v.

BIG TEN CONSTRUCTION, LLC,
ET AL.,

DEFENDANTS.

CASE NO. 16 CV H 01 0025

JUDGE EVERETT H. KRUEGER
MAGISTRATE KRISTIN SCHULTZ

MAGISTRATE'S DECISION
RECEIVED
ATTORNEY GENERAL OF OHIO

FEB 01 2017

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

Plaintiff commenced this action with the filing of its Complaint on January 12, 2016 in the Delaware County Court of Common Pleas. The Complaint alleged five causes of action under the Consumer Sales Practices Act ("CSPA") against Defendants Eric Tischer ("Tischer") and Big Ten Construction, LLC ("Big Ten"). Defendant Tischer was successfully served by certified mail on January 14, 2016. Service on Defendant Big Ten was returned as unclaimed and, on August 12, 2016, service was completed upon mailing of the Complaint and Summons by ordinary mail.

Defendants failed to respond within the twenty-eight days allotted under the rules, and Plaintiff moved for default judgment against Defendant Tischer on April 27, 2016, and against Defendant Big Ten on October 12, 2016. Plaintiff's motion for default against Defendant Tischer was set for a hearing on June 17, 2016, but this hearing was vacated to allow for service to be completed against Defendant Big Ten. On October 17, 2016, this Court set an oral hearing on the motions for default judgment and damages for November 21, 2016 at 11:30 AM.

On November 16, 2016, Plaintiff filed a Memorandum in Support of Damages and Civil Penalties ("Damages Memo"), in which Plaintiff submitted evidence supporting the amount of civil penalties and consumer damages that Plaintiff was requesting.

In support of its request for consumer damages, Plaintiff attached to its Damages Memo twelve consumer affidavits (Exhibits 3-14), which attest to the damages each suffered. The evidence established that the consumers sustained monetary damages after Defendants failed to provide the services for which Defendants accepted the consumers' payments. Plaintiff's counsel appeared before the Court and presented evidence to support the Plaintiff's request for consumer damages and civil penalties. Neither of the Defendants nor counsel on their behalf appeared.

The Court finds that each consumer sustained individual damages in the amounts set forth in the Consumer Damages List (attached as Exhibit 2 to Plaintiff's Damages Memo).

In its Damages Memo, Plaintiff also explained the basis for the amount of civil penalty requested. Plaintiff made the request pursuant to the CSPA, R.C. 1345.07(D) and provided evidence of the Defendants' violations of the CSPA, which permit the imposition of a civil penalty in the amount of \$50,000. The Court finds Plaintiff's request well-taken.

Based on the above, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Defendant Tischer is a natural person who resides at 5090 Blackstone Edge Drive, New Albany, Ohio 43054.
2. Defendant Big Ten is registered as a Limited Liability Company with the Ohio Secretary of State.

3. The principal place of business for Big Ten is 700 Morse Road, Suite 210, Columbus, Ohio 43214.
4. Defendant Tischer is the statutory agent for Big Ten.
5. Defendant Tischer at all times pertinent hereto controlled and directed the business activities and sales conduct of Defendant Big Ten, causing, personally participating in, or ratifying the acts and practices of Big Ten, including the conduct giving rise to the violations described herein.
6. Defendant Tischer was successfully served by certified mail with the summons and Complaint on January 14, 2016.
7. Defendant Big Ten was successfully served by regular mail on August 12, 2016, after service by certified mail was returned as unclaimed.
8. Defendants accepted monetary deposits from consumers for the purchase of home improvement goods and services, and failed to deliver some of those goods and services within eight weeks.
9. Defendants have refused to refund consumers' deposits or payments despite consumers' requests for refunds.
10. After receiving payment, Defendants sometimes began work but failed to complete the work.
11. Defendants provided shoddy and substandard home repair services to consumers and then failed to correct such services.
12. Defendants represented to consumers that Defendants would provide the ordered goods and services within an estimated time and then failed to provide such goods and services in the time promised.

13. Defendants failed to respond to consumer inquiries and failed to give consumers accurate information about material facts related to delivery and service dates and information pertaining to permits required for home improvement work.

14. On October 20, 2011, Defendants signed an Assurance of Voluntary Compliance ("AVC") with the Consumer Protection Section of the Ohio Attorney General's Office.

Based on the AVC, Defendants agreed to refrain from:

- a. Committing an unfair or deceptive act or practice in connection with a consumer transaction, in violation of the CSPA, R.C. 1345.02(A);
- b. Committing an unfair or deceptive act or practice in connection with a consumer transaction, in violation of the CSPA, R.C. 1345.21 et seq.;
- c. Accepting down payments for home improvement goods or services and then failing to deliver those goods or services or allow more than eight (8) weeks to elapse without delivering the goods or services or making a full refund of the down payments, in violation of the CSPA, R.C. 1345.02(A), and the Failure to Deliver Rule, Ohio Admin. Cod 109:4-3-09;
- d. Performing shoddy and unworkmanlike services in connection with a consumer transaction and then failing to correct such work, in violation of the CSPA, R.C. 1345.02(A); and
- e. Failing to respond to consumer inquiries and failing to give consumers accurate information about material facts related to delivery and service dates, information pertaining to permits required for home improvement work, and the endorsement and deposit of insurance and down payment checks, in violation of the CSPA, R.C. 1345.02(A).

15. Pursuant to the terms of the AVC, Defendants agreed to pay a civil penalty of \$15,000, with \$13,000 suspended upon “full and complete compliance with the terms of this Assurance.”
16. Pursuant to the terms of the AVC, Defendants agreed to comply with all terms of the AVC and to conduct their business in compliance with Ohio law, including the CSPA and its Substantive Rules.
17. In some instances, Defendants’ contracts directed consumers to mail a Notice of Cancellation to “Distinctive Design Remodeling” in Lexington Kentucky.
18. In some instances, the Notice of Cancellation in Defendants’ contracts was not located in immediate proximity to the space reserved for the signature of the consumers.
19. Defendants failed to include a detachable Notice of Cancellation form with their contracts.

CONCLUSIONS OF LAW

20. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
21. Defendants have been properly served with the Complaint and Summons and failed to respond within 28 days.
22. 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 Delaware County.
23. The Attorney General is the proper party to commence these proceedings under the authority provided him under R.C. 1345.01 *et seq.* and by virtue of his statutory and common law authority to protect the interests of the citizens of Ohio.

24. Defendants are "suppliers," as that term is defined in R.C. 1345.01(C), as they engaged in the business of effecting "consumer transactions" by soliciting consumers either directly or indirectly for home remodeling and repair goods and services for a fee, within the meaning of R.C. 1345.01(A).
25. Defendants committed unfair and deceptive acts and practices in violation of the Failure to Deliver Rule, Ohio Adm. Code 109:4-3-09 and CSPA, R.C. 1345.02(A), by accepting money from consumers for repairs and services on household goods and permitting eight weeks to elapse without delivering the promised services or issuing a full refund, advising the consumers of the duration of an extended delay and offering to send a refund within two weeks if so requested, or furnishing similar goods or services of equal or greater value as a good faith substitute.
26. Defendants committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) by performing repairs and services on household goods in an incomplete, shoddy, or unworkmanlike manner, and failing to correct the work.
27. Defendants committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) by failing to acquire proper permits before performing services.
28. Defendants committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) by violating the terms of the October, 20, 2011 AVC entered into by Eric Tischer individually and in his capacity as an agent/officer of Big Ten Construction, LLC.
29. Defendants violated the Home Solicitation Sales Act, R.C. 1345.23 and R.C. 1345.02(A), by failing to give proper notices to consumers of their right to cancel their contracts by a specific date.

THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED THAT:

- A. A judgment by default is hereby entered in favor of Plaintiff and against Defendants, pursuant to Civ. R. 55.
- B. 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.
- C. Defendants, under their own names or any other names, 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.
- D. Defendants are jointly and severally ORDERED to pay consumer damages, to consumers identified in affidavits provided to the Court who were injured by the conduct of the Defendants as set forth herein in the amount of \$120,461.50. Payment shall be made to the Consumer Protection Section of the Office of the Ohio Attorney General for distribution to Consumers in the amounts set forth in State's Exhibit 2. Such payment shall be made by certified check or money order, payable to "Ohio Attorney General," and delivered to:

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- G. Defendants are ENJOINED from engaging in business as suppliers in any consumer transactions in the State of Ohio, until such time as they have satisfied all monetary obligations due hereunder.
- H. Defendants are ORDERED to pay court costs.

A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ. R. 53(D)(3)(b). A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i).

11/23/2016
DATE


MAGISTRATE KRISTIN A. SCHULTZ

The Clerk of this Court is hereby Ordered to serve a copy of this Judgment Entry upon the following by

☒ Regular Mail, ☐ Mailbox at the Delaware County Courthouse, ☐ Facsimile Transmission

BRANDON C DUCK, 30 E BROAD STREET 14TH FLOOR, COLUMBUS, OH 43215

ERIC TISCHER, 5090 BLACKSTONE EDGE DRIVE, NEW ALBANY, OHIO 43054

BIG TEN CONSTRUCTION, LLC, 5090 BLACKSTONE EDGE DRIVE, NEW ALBANY, OHIO 43054

This document sent to
each attorney/party by:

- ☒ ordinary mail
- ☐ fax
- ☐ attorney mailbox
- ☐ certified mail

Date: 11/29/11 By: 